REASSESSMENT

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CONTENTS

CHAPTER I

INTRODUCTION

Page

I. Defects of the General Property Tax. ---------- 1

1. Functional Defects ---------- 1

a. Lack of Uniformity or Inequality of Assessment --------- 1

b. Lack of Universality or Failure to Reach Personal Property --- 2

c. Incentive to Dishonesty---------- 2

d. Regressivity ---------- 3

e. Double Taxation ---------- 4

2. Theoretical and Historical Defects---------- 4

II. Social Laws only Statements of Tendency ---- 5

III. The State Tax Commission ---------- 6

IV. Reassessment ---------- 6

1. Reassessment Defined ---------- 6

2. Reassessment Related to Both Tax Commission and General Property Tax --------- 7

V. The General Property Tax ---------- 8

1. Origin ---------- 8

2. History in the United States---------- 9

VI. The Modern Tax Commission a Work of Evolution ----- 10

VII. Six Stages of Centralizing Tax Administration ---- 10

1. The Stage of the Local Assessor ------ 11

2. The Stage of Schedule Valuation ------- 12

3. The Stage of Local Boards of Review -- 13

Page

4. The Stage of State Boards of Equalization ... 14

a. Causes for the Development of State Boards of Equalization ------14

b. The United States Has Become a Country of Centralization ---- 15

c. Failure of Local Boards to Make Just Equalization ------ 15

d. The Increasing Tax Burden ---------- 16

e. Intangibles Escape in Large Part from .... 17 Taxation

f. Tendency to Undervaluation ---------- 17

g. Assessed Valuation in Kansas in 1897------- 18

h. Results of Competitive Undervaluation ----- 19

i. Growth of State Boards of Equalization --- 19

j. Causes for the Failure of State Boards of Equalization --- 20

k. Equalization Power Limited. ---------- 21

5. The Stage of State Boards for the Assessment of Corporation --- 21

a. Establishment of Boards for the Assessment of Corporations 21

b. Development of the Kansas State Board of Railroad Assessors ------22

c. Some Corporations Assessed by State Governments; Reasons. ------ 23

d. Policies Followed by Different States in the Assessment of Corporations --- 24

6. The Stage of the State Tax Commission -------- 25

a. Supervision of Local Tax Officials ------- 25

b. Indiana Tax Commission Given Power of Reassessment -26

c. Special Tax Commissions Precede Permanent Tax Commission ------- 26

d. Reasons for the Establishment of Permanent Tax Commissions --- 27

Page

e. State Boards of Equalization and State Tax Commission Compared ---- 28

f. Administrative Powers of the Tax Commission..29

g. Quasi-Judicial Powers of the Tax Commission..30

h. Administrative and Quasi-Judicial Powers Illustrated ----30

i. A Typical Tax Commission ---------- 31

j. The Power of Equalization ---------- 32

k. The Administration of Taxes Not Local in Character -------- 32

l. Supervision of Local Tax Officials -------- 32

m. Reassessment ---------- 33

CHAPTER II.

REASSESSMENT BY STATES.

I. Introduction ---------- 35

1. Reassessment in the Different States -------- 35

II. Minnesota ---------- 35

1. Extent of the Tax Commission's Power of Reassessment ---------- 35

2. The Classified Assessment Law ---------- 36

3. Commission Has Exercised Power of Reassessment Conservatively ----- 37

4. The Three Mill Tax on Money and Credits ----- 38

5. Reassessments Ordered to Enforce Three Mill Tax. ---- 39

6. Davidson v. Franklin Ave. Investment Co. ---- 40

7. State v. Minnesota and Ontario Power Co. ---- 41

III. Michigan ---------- 44

1. Tax Administration Shared by Three Interlocking Boards ---------- 44

Page

2. Total County Valuations Determined by State Board of Equalization -------- 45

3. History of the Power of Reassessment --------- 45

4. Extent of the Tax Commission's Power of Reassessment ------ 46

5. Tax System in a Chaotic Condition in 1911 ---- 47

6. Results of the Power of Reassessment Shown Statistically ---- 48

7. Reassessment of Entire Counties since 1912 --- 52

8. Reassessment Unnecessary if Local Officials Follow Instructions ---- 53

9. Few Reassessments since 1920 ---------- 53

10. Board of State Tax Commissioners v. Board of Assessors of Grand Rapids 54

IV. Wisconsin ---------- 55

1. Powers of the Tax Commission ---------- 55

2. Reassessment from 1905 to 1910 ---------- 55

3. Reassessment from 1910 to 1917 ---------- 56

4. Reassessment since 1917 ---------- 57

5. Defects of the Present Reassessment Law --- 57

6. Attorney General v. Hamerlund ---------- 58

7. Hennsey v. Daniels ---------- 59

8. Knaus et al. v. Rollof et. al. ---------- 60

9. South Range v. Tax Commission---------- 61

10. Culliton v. Bently---------- 62

11. Blair v. Erickson ---------- 63

Page

V. West Virginia. ---------- 65

1. Provisions of the Tax Act of 1904 ---------- 65

2. Unusual Features of the Tax Act of 1904 66

3. Tax Commissioner Given Power of Reassessment in 1921.--------- 67

4. Extent of the Tax Commissioner's Power of Reassessment ------- 68

5. The Power of Reassessment Enables Tax Commissioner to Enforce Law 69

6. Reassessment Has Increased Valuations ---------- 69

7. State Not Yet on an Actual Value Basis -------- 70

8. State Tax Commission v. Rocke, County Assessor 71

VI. New York. ---------- 73

1. Powers of the Tax Commission ---------- 73

2. Extent of the Tax Commission's Power of Reassessment ---------- 74

3. Tax Commission Began Cash Value Campaign in 1915 75

4. Cash Value Campaign Failed ---------- 76

5. Results of the Cash Value Campaign Shown Statistically 76

VII. Kansas ---------- 79

1. Reassessments; How Ordered---------- 79

2. Due Notice of Hearing Must Be Given --------- 79

3. Special Assessors ---------- 80

4. The Reassessment Completed---------- 80

VIII. Alabama ---------- 81

1. Extent of the tax Commission's Power of Reassessment 81

2. State Tax Commission v. Bailey and Howard --------- 81

3. State Tax Commission v. Tenn. Coal, Iron, and Railway Co. ------ 82

IX. Colorado ---------- 89

1. Powers of the Tax Commission ---------- 89

2. Extent of the Tax Commission's Power of Reassessment 90

3. People v. Pitcher ---------- 91

X. Missouri ---------- 91

1. Powers of the Tax Commission ---------- 91

2. Extent of the Tax Commission's Power of Reassessment 92

XI. Indiana ---------- 93

1. Extent of the Tax Commission's Power of Reassessment 93

2. Board of Commissioners of Johnson Co. v. Johnson 93

XII. Ohio ---------- 94

1. Extent of the Tax Commission's Power of Reassessment 94

XIII. Kentucky ---------- 95

1. Extent of the Tax Commission's Power of Reassessment 95

XIV. Illinois ---------- 96

1. Extent of the Tax Commission's Power of Reassessment 96

XV. South Dakota ---------- 97

1. Extent of the Tax Commission's Power of Reassessment 97

XVI. South Carolina and Maine ---------- 97

1. Extent of the Tax Commissions' Power of Reassessment 97

CHAPTER III.

CRITICAL ESTIMATE

Page

I. Local Assessor Defective ---------- 98

II. Reassessment Improves Original Assessment -------- 99

III. County Assessor System v. Township Assessor System 100

1. County System Sould Supplant Township System --- 100

2. Township System Inferior; Reasons ---------- 101

IV. Proposed Reforms ---------- 102

1. Plan One ---------- 102

2. Plan Two ---------- 103

3. Plan Three---------- 104

4. Plan Four ---------- 104

V. Effect of Reassessment upon Assessed Valuations ----- 105

1 Michigan ---------- 105

2. Wisconsin ---------- 106

3. West Virginia---------- 106

4. New York ---------- 107

5. Conclusion ---------- 108

VI. Uniformity of Assessments ---------- 108

VII. Time Limit of Reassessments ---------- 109

1. Descretion of Tax Commission ---------- 109

2. Established by Statute ---------- 110

VIII. Constitutionality of Acts Creating Tax Commissions111

1 Established by Test Cases ----------111

2. Attacked ----------111

3. Upheld by Courts ----------112

Page

IX. Tax Commission May Make Reasonable Demands -------- 113

X. Variations in Manner of Making Reassessments -------- 116

1. Under What Conditions Ordered ---------- --- 116

a. Upon Complaint ---------- 117

b. Upon Motion of Tax Commission or upon Compaint 118

c. Upon Petition ---------- 117

d. Upon Court Order ---------- 118

2. Time Limit ---------- 118

3. Extent as to Territory ---------- 118

4. Extent as to Classes of Property---------- 119

5. By Whom Made---------- 120

6. By Whom Reviewed ---------- 121

7. Conclusion ---------- 121

XI. Equalization; When Unnecessary ---------- 122

XII. The Future of Reassessment ---------- 123

XIII. Methods of Improving Local Assessments---------- 124

XIV. Reassessment ---------- 125

1. Effect upon the Five Defects ---------- 125

XV. Future of the General Property Tax ---------- 126

REASSESSMENT.

Chapter 1

INTRODUCTION

I. Defects of the General Property Tax.

1. Functional Defects. Since the founding of our country there has been much discussion and no end to legislation to remedy the so-called defects of the general property tax. The general property tax has been regarded as defective because it has failed to bring about an equitable distribution of the tax burden throughout the United States. Tax authorities differ somewhat as to just what these defects are. According to Seligman the general property tax has the following functional defects: first, lack of uniformity or inequality of assessment; second, lack of universality or failure to reach personal property; third, incentive to dishonesty; fourth, regressivity; and fifth, double taxation. [1]

Lack of Uniformity or Inequality of Assessment. Lack of uniformity in taxation results because of competitive undervaluation on the part of counties in an attempt to shift the burden of the state tax, and competitive undervaluation on the part of local districts

1. Seligman, Essays in Taxation, Chap. II., pp. 24 ff.

in an attempt to shift the burden of the county tax. In some counties and some districts the undervaluation is greater than in others. This results, if these differences in valuation are not properly equalized, in an ununiform distribution of the tax burden throughout the state.

Lack of Universality or Failure to Reach Personal Property. There has always been a tendency on the part of tax payers to conceal personal property from the assessor. This is especially true of intangibles which are so easily concealed. This tendency to conceal personal property becomes greater as the tax rate increases. As undervaluation raises the tax rate, it increases the tendency on the part of taxpayers to conceal property, and hence makes the general property tax less universal.

Incentive to Dishonesty. The general property tax causes an incentive to dishonesty in several ways: First, there is a tendency on the part of the assessor to undervalue property. This not only lessens the state tax upon the county but also makes the assessor many friends and improves his chances for reelection. Second, there is the tendency to conceal intangibles from the assessor. This tendency increases as the tax rate increases. Third, because of the fact that so many tax payers are prone to

misinform assessors as to the actual value of their property. A taxpayer by being honest to an assessor is dishonest to himself and pays more than his share of taxes. For this reason there is a tendency even on the part of honest men to be dishonest to assessors.

Regressivity. A progressive tax is one in which people pay a higher rate of tax as their ability to pay taxes increases. A regressive tax is one in which people pay a higher rate of tax as their ability to pay taxes decreases. The general property tax has been regarded as a regressive tax in this manner: The holders of intangible property are generally the people best able to pay taxes. These people, however, conceal their property from the assessor and do not pay taxes on it. This makes, according to Seligman, the holder of real property, who as a rule has less ability to pay, pay a double tax: his tax and that of the owner of intangibles. Some tax authorities, however, say that it is not the fact that intangibles escape taxation that makes the general property tax regressive. They say that the general property tax would be just as regressive as it is even though the holders of intangibles paid taxes on their property. For this tax would be reflected in higher interest rates, and thus indirectly the tax would be shifted

to the holders of real property.

Double Taxation. Double taxation has resulted from the fact that a person can own and owe at the same time. If people are assessed upon the theory that the actual worth of a person's property can be obtained from subtracting what he owes from what he owns an injustice is done to the honest man, as the dishonest man has a tendency to overstate what he owes. Therefore, some states have adopted the policy of assessing people upon the actual amount of property that they possess without making deductions for debts. This is called double taxation because people are taxed not only upon what they own but also upon what they owe. It is obviously unjust. According to Seligman both methods are unjust: In the first case the honest man is over assessed, and in the second case both the honest man and the dishonest man are over assessed.

2. Theoretical and Historical Defects.

Seligman says further that the general property tax is not only theoretically unjust but also that historically it has been a failure. It is theoretically unjust because a tax should be determined by ability to pay and ability to pay depends upon product not property. Historically it has shown itself to be absolutely inequitable and unworkable, and it has been discarded by the countries

of Europe. Before long it will inevitably be discarded by the United States also.

II. Social Laws Only Statements of Tendency.

Seligman predicts that the general property tax will fail in the United States because of the law that history repeats itself. Marshall says, however, that social laws are only statements of tendency. [1] He says, "Every cause has a tendency to produce some definite result if nothing occurs to hinder it." If Marshall is correct, it does not necessarily follow that because the general property tax has failed in Europe, it will fail in the United States also. If means can be devised to render inoperative those causes which have brought about the failure of the general property tax in Europe, the tax may continue to exist in this country. If this cannot be done, it may fail. Not many years ago it looked as though the general property tax was doomed to almost certain failure, but there have been in recent years a number of developments tending to stay its abolition. Perhaps the most important of these developments is the permanent state tax commission.

1. Marshall, Principles of Economics, pp. 31 ff.

III. The State Tax Commission.

The state tax commission is usually a board of three persons appointed by the governor. It owes its existence to the inequalities in taxation growing out of the defects of the general property tax. It was created for the purpose of correcting these inequalities. Its powers and duties differ somewhat in different states; but as a rule together with other powers it has the power of general supervision over matters relating to taxation. In a number of states the tax commissions have been given the power of reassessment. This power seems to have aided a great deal in making taxation more equitable.

IV. Reassessment Defined.

A reassessment, as the name implies, is a second assessment. It is usually made by a state tax commission or similar organization, or by the duly authorized agents of either, for the purpose of correcting a first or original assessment by local tax officials. Reassessments may only be ordered in case original assessments are unjust. Reassessments may be ordered in two different ways: first, upon the motion of the tax commission; and second, upon complaint made to the tax commission of dissatisfied taxpayers or local tax

officials. Some tax commissions do not have power to order reassessments on their own motion but may order them only upon receiving complaints. Reassessments may be either general or individual; that is, they may be of all of the property in the district or county reassessed, or only one individual piece or description of property. They may be also general or specific; that is, they may be of all of the property or of only a specific class of property in the district or county reassessed. The word reassessment, however, is sometimes used in the sense of revaluation. For example, in the case of the State of West Virginia v. Rocke County Assessor,[1] the court refers to general revaluations of real estate, which were ordered by legislative acts of 1873, 1882, 1891, and 1899, as reassessments.

Reassessment Related to Both Tax Commission and General Property Tax. As was said before, reassessment is one of the several powers by means of which the tax commission is trying to overcome the defects of the general property tax. In order to get a clear understanding of reassessment it is necessary to become familiar with both the tax commission and the general property tax. For this reason it seems advisable to discuss each of them at some length.

1. 113 S.E. 647.

V. The General Property Tax.

Origin. In a primitive country taxation is of necessity largely in the nature of a land tax or real property tax.[1] As the country advances in the scale of civilization, the personal property which was small at first increases in amount. The people think it unjust to tax real property and not tax personal property. In an attempt to secure justice they expand the tax so that it includes not only real property but also personal property. The real property tax now becomes the general property tax. Many people are of the opinion that the general property tax originated in America, because at the present it appears to be so characteristically American. This is a mistake, however, as a tax similar to the American general property tax existed in Europe years before the discovery of the new world. The tax failed to function properly in Europe and was discarded. The same thing that happened in Europe some time ago is happening in America today: the general property tax is not functioning as it should. It remains to be seen whether or not the tax commission and other corrective devices will be able to stay its abolition.

2. Seligman, op. cit., pp. 37, 53.

History in the United States. In early colonial times there was some attempt on the part of several of the colonies to tax people not upon property but upon product.[1] But the tax upon product soon gave way to the general property tax. The general property tax was at first highly decentralized.[2] It was not necessary to have a highly centralized taxing system in those days for the two following reasons: First, public expenditures were not nearly so great then as they are now, and consequently the burden of taxation was much less. There was not, therefore, as much evasion on the part of tax payers as there is at present in this age of high taxes; Second, property at that time was mostly real property. The problem of personal property, which is not only too great for local units to manage but which has even baffled the officials of highly centralized taxing systems, had not yet appeared. The two reasons why it was unnecessary, in colonial and early statehood days to have a highly centralized taxing system have just been given. The real reason, however, why we did not have a centralized taxing system at this time was because it was an age of decentralization. It was an age of liberty, an age of freedom, a

1. Seligman, op. cit., pp. 54 ff.
2. Lutz, op. cit., pp. 5, 7.

a Jeffersonian age; an individualistic age engendered not only by the primitive conditions of a new country which cause man instinctively to revert to his original individualistic tendencies, but also by the revolt against the centralizing policy of Great Britain.

VI. The Modern Tax Commission a Work of Evolution.

The tax commission, which was created for the purpose of correcting certain evils growing out of the defects of the general property tax, does not owe its existence entirely to the originality of the modern legislator. It is the final product of an organization which has been developing gradually in the United States since colonial times. The modern legislator has simply added an additional touch to an administrative organization which already existed and which owed it existence to al long process of evolution.

VII. Six Stages of Centralizing Tax Administration.

There have been in the United States six stages of centralizing tax administration, the last one of which is the stage of the state tax commission. The six stages are as follows: first, the stage of the local assessor; second, the stage of schedule valuation; third, the stage of the local board of equalization; fourth, the stage of

the state board of equalization; fifth, the stage of state boards for assessment of corporations; and sixth, the stage of the state tax commission. It would be far from the truth, however, to think that each state passed through all of the above stages during the course of its tax history. Some states did not pass through all of these stages, and in some of those that did the order of sequence was different. The following history of the development of the tax commission is not accurate as to detail. It is intended simply to convey a general notion of the course of the development of the tax commission in the United States.

1. The Stage of the Local Assessor. In early times the assessor was by far the most important official in the taxing system.[1] The tax unit was sometimes the township and sometimes the county, generally the township in New England and the county in the southern states. The assessor sometimes got his office ex officio , sometimes by appointment, and sometimes by election. In spite of the fact that the assessor was the most important official in the taxing system our liberty loving ancestors did not see fit to vest this officer with a great deal of power and reserved to themselves large freedom of self assessment. For example one common method of assessment, and one still in use in some of the states, was for each of the taxpayers to prepare a list of his taxable property, and upon

1. Lutz, op. cit.,pp. 9 f.

an appointed day for all of these taxpayers to assemble and present their lists to the assessor. After the lists were all in, it was the custom of the assessor to announce a period during which the lists would be open to inspection and claims for abatement could be made. Plainly such a method of equalization as this was unsatisfactory because of the favoritism shown to certain taxpayers by assessors and it resulted in a great deal of injustice.

2. The Stage of Schedule Valuation. The states in order to overcome the injustice resulting from equalization by the assessor often established by law schedules of valuations which determined the value at which various classes of property should be rated. For example, in the state of Virginia the Act of 1771 established a schedule of valuations as follows: "All male citizens between the ages of 16 and 60 years (with certain exceptions) were rated at 6 pounds; every ox or steer four years old or over 4 pounds; every steer or heifer of three years and every cow 3 pounds; all 'horse kind' of two years 2 pounds each; all horse kind of one year or more 1 pound each --- "[1]

1. Ripley, Columbia College Studies, IV, 34.

This method was unsound as it did not take account of the variation in value within the same class. But in the early days of our statehood when wealth was fairly homogeneous in nature and equal in earning power, it probably worked fairly satisfactorily. But with the increase in personal property and the advent of intangibles of various kinds and varying degrees of earning power, the schedule method of valuation became inadequate and was abandoned in most states.

3. The Stage of Local Boards of Review. After the method of schedule valuation had failed to bring about an equitable distribution of the tax burden, an attempt was made to make taxation more equitable by introducing a number of reforms into the local tax unit. The reforms introduced at this time were:[1] First, the assessor was given increased power to inquire into wealth concealed by taxpayers. Second, the oath, which before this time had not been taken very seriously was solemnized and made mandatory for both assessor and taxpayer: penalties were increased for false oath or returns. Third, and perhaps most important of all, was the establishment of local boards of review and equalization. The introduction of local boards of review and equalization marks the first

1. Lutz, op. cit., pp. 16-18.

important step in the United States toward centralization of tax administration. These boards, however, did not accomplish a great deal in the way of making taxation more equitable. Some of the main reasons for their failure were:[1] First, they were almost universally at first restricted to the power of equalization between tax districts, that is, they did not possess the power of original equalization or equalization between individuals, Second, there was a tendency on the part of the members of these boards to put lower valuations on the districts from which they came than upon the other districts in the county. Third, and perhaps most important of all was the tendency on the part of both local boards and local assessors to undervaluation. This tendency to undervaluation was one of the most important causes for the development of state boards of equalization. The appearance of these state boards marks the second important step in the centralization of tax administration.

4. The Stage of State Boards of Equalization.

Causes for the Development of State Boards of Equalization. The most important reasons for the development of state boards of equalization were as follows:[2]

1. Lutz, op. cit., pp. 16-19.
2. Ibid., pp.23 f.

first, the United States has gradually changed from a country of decentralization to a country of centralization; second, failure on the part of local boards to make just equalizations; third, the increasing tax burden, caused not only by the increasing complexity of our social order but also later on by the expenses of the Civil War; and fourth, the tendency on the part of local boards and local assessors to undervaluation.

The United States Has Become a Country of Centralization. As was stated before, the Age of Jefferson was an age of liberty, and an age of decentralization. But as America grew older and those conditions which make for decentralization in a new country began to disappear, there was a gradual drift toward centralization in all of the administrative branches of both our National and State governments. This was especially true after the Civil War. Although the immediate cause of the Civil War was slavery, the war was in fact a struggle between the forces of centralization and the forces of decentralization to see which should be supreme in the United States.

Failure of Local Boards to Make Just Equalizations.

Failure on the part of local boards to make just equalizations has been mentioned before and need not be dwelt upon at length.[1]

1. Lutz, op. cit., pp. 16, 17.

As was said there was a tendency on the part of the members of these local boards to try to keep the valuations of their respective districts as low as possible and to saddle an undue burden upon the remaining districts of the local unit. The injustice resulting from such a form of equalization caused dissatisfaction within the local units and was one of the causes leading to centralization of tax administration.

The Increasing Tax Burden. The rate of taxation, very low during colonial and early statehood days, increased gradually with the growth in complexity of our social order.[1] After the year 1860, the date of the beginning of the Civil War, it increased by leaps and bounds. In the year 1860 the average tax rate for the whole United States was 78 cents for each $100 of assessed valuation. In 1870, ten years later, it was $1.98. Taxes are paid grudgingly enough when they are low and the higher they become the more grudgingly they are paid. In other words the higher taxes become the more tendency there is to tax evasion. During the early history of the United States, as was stated before, taxation was handled with a fair degree of success by the local taxing units, but in those days the tax rate was low and most of the property was real property. As time passed, however, the tax rate became increasingly higher and higher and the ratio of

1. Lutz, op. cit., p. 26.

personal property to real property became increasingly larger and larger.

Intangibles Escape in Large Part from Taxation. History has shown that wherever the general peroperty tax has been introduced intangibles have escaped in large part from taxation. Because of this fact the holders of real property and personal property other than intangibles have thought themselves unduly taxed. It has appeared to them that they have been paying not only their own taxes but also the taxes of the holders of untaxed intangibles. This has caused a great deal of dissatisfaction and has helped to bring about centralization of tax administration.

Tendency to Undervaluation. Perhaps the most important cause leading to the establishment of state boards of equalization was the tendency on the part of local boards and local assessors to undervaluation.[1] The expenses of most state governments are met in part by direct taxes. The state in an attempt to make taxation uniform among the several counties distributes the tax burden among the several counties in proportion to their respective valuations. Each of these several counties now becomes fearful lest it shall pay more than its just proportion of the state tax. The result is competitive undervaluation. The undervaluation itself would not make the state tax ununiform provided each

1. Lutz, op. cit., pp. 16, 17.

of the counties valued its property at the same percentage of its actual cash value. But in practice this precentage, due to the different standards of the different local assessors differs greatly. In some counties property is assessed at practically its cash value while in others the assessed valuation is often no more than 20 or 25 % of the actual value.

Assessed Valuations in Kansas in 1897. The state of Kansas in the year 1897 furnishes a good example of competitive undervaluation.[1] "In 1897 the assessors of Atchison County decided to rate personal property at 25% of its true value; Chase County at 33 1-3 %; Elk County at 40%; Rice County at 30%; Franklin County at 50%; Philips County at 60%; Stanton County at 75%; Decatur County at 100%. So far as I can find out only three countes followed the plain instructions of the law and assessed property at 100% of its actual value. The conditions in regard to the assessment of real property were even worse. The rate of real property in Brown County was fixed at 20%; in Dickinson County at 25%; in Sedgwick at 30%; in Shawnee at 33 1-3 %; in Osborne at 40%; in Franklin at 50%; in Graham at 80%; in Hodgenaw at 100%; in Grove at 200%. Only eight counties reported 100% of the actual value as the rate of assessment."

1. Benton, Johns Hopkins University Studies, XVIII, 160.

Results of Competitive Undervaluation. Competitive undervaluation results, therefore, in a very unjust distribution of the state tax burden throughout the state. In counties where there are local tax districts there is a similar tendency to undervaluation on the part of these districts in an attempt to escape the burden of the county tax. Local boards of equalization have not always corrected the inequalities resulting from such undervaluation.

Growth of State Boards of Equalization. State boards of equalization developed slowly at first but more rapidly later on.[1] One of the first of these boards was established in Vermont in the year 1820.[2] Ohio established a state board of equalization in the year 1825. Several other boards were established at about this same time. Equalization by these early boards, however, were made only on the occasion of land reappraisals which occurred irregularly or every several years; in the case of Ohio these reappraisals occurred every ten years. Regular annual equalization did not begin , however, until about the middle of the century. The first states to establish regular annual equalization

1. Lutz, op. cit.,p. 19.

2. Ibid, pp. 20, 21.

were Michigan and Iowa in the year 1851 and Wisconsin and Indiana in the year 1852. Many state boards of equalization were established in the years immediately following the Civil War. No doubt the increasing tax burden and the increasing amount of intangibles, both of which became so evident at about this time, had a great deal to do with the establishment of these boards. The process of centralization has continued until at the present time practically every state in the United States has state equalization of some kind, either by a state board of equalization or by a state tax commission.

Causes for the Failure of State Boards of Equalization.

State boards of equalization have turned out to be somewhat of a disappointement.[1] They have not been very successful in curing the evils for which they were intended. Opponents of the general property tax say that the fault is not the fault of the board but the fault of the tax. They say that the general property tax is not only unworkable but even unthinkable and unendurable. There seems to be considerable reason to believe, however, that the failure of the state boards of equalization was due in part at least to the fact that the administrative authority given to these boards which was largely of an advisory nature was entirely inadequate to enable them to remedy the defect for which they were designed.

1. Lutz, op. cit., p. 24.

Equalizing Power Limited. As was stated before possibly the most important reason for the failure of the state boards of equalization was their insufficient administrative powers. The first state boards of equalization had only the power to equalize between districts; they did not have power to equalize between individuals. In some states the power of equalization extended only to real estate. Generally, however, the boards were given the power to equalize both real and personal property. But as revauations of real property were made in many states only every several years, and the power to equalize real property was limited to these years of general revaluation, the power of the state boards to equalize real property was limited. State boards were often limited, too, in the amount that they might alter local valuations: for example. at one time the Ohio board could raise or lower the total local valuation by 12½%; the Minnesota board was not permitted to reduce the total but might increase it apparently without limit; the Kansas board might raise or lower the total valuation for any county but was not allowed to alter the total for the state; the Michigan board was free to alter this total by any amount in either direction.

5. The Stage of State Boards for the Assessment of Corporations.

The third important step toward the centralization of tax administration was the establishment

of boards for the assessment of corporations.[1] These boards were established as a rule somewhat later than the the state boards of equalization; but in a few states, especially in the South, they were established earlier. In several states both kinds of boards were established at the same time. The majority of these boards for the assessment of corporations were established in the twenty years following the Civil War. In several states no separate board was established but the functions of this board were assumed by the state board of equalization. In the days of our early statehood all property was assessed by the same methods and agencies. No distinction was made between corporate property and other property. Both forms of property were assessed by the local assessor under the rules and regulations of the general property tax. It was not long, however, until the state governments began to show a tendency to assume the function of assessing corporations. In the following paragraph is given a brief history of the development of the Kansas state board of railroad assessors. Boards for the assessment of corporations developed in other states in a somewhat similar manner.

Development of the Kansas State Board of Railroad Assessors. When Kansas became a state in 1861, all property in the state was assessed alike under the general

1. Lutz, op. cit., pp. 33 ff.

property tax.[1] But differentiation soon began: for only two years later, in 1863, the secretary of state was given power to collect certain fees from insurance companies. In the year 1869 the first step was taken toward the independent assessment of railroads. In that year a law was passed creating special boards for the assessment of railroads. Where a railroad was located entirely within one county, the board was composed of the county commissioners. Where the railroad was located in two or more counties, the board was made up of the county clerks of these counties. Some years later a state board of railroad assessors was created.

Some Corporations Assessed by State Governments; Reasons. There are two important reasons why the state governments have manifested a tendency to take the power of assessment of corporations away from the local assessor: first, the corporations, especially the so-called public service corporations, such as railroads, telegraph and telephone companies, etc. are so large and extend over so much territory that they present a problem entirely too big for the local assessor; second, the state government, like all other units of government, is constantly in need of revenue and has hit upon the assessment of corporations as one of the means for supplying this revenue. As was stated before it has been the custom of the state governments in the past to get a considerable

1. Benton, op. cit., pp. 134, 135.

part of their revenue from a general property tax superimposed upon the general property tax of the local government. This tax has led to undervaluation on the part of local units, to an inequitable distribution of the state tax and to a great deal of dissatisfaction on the part of taxpayers. This direct general property tax has caused so much injustice and dissatisfaction that some states have even tried to do away with it altogether.[1] In its stead they have attempted to supply the state government with revenue by other kinds of taxes; such as the tax on corporations, the income tax, the inheritance tax, etc. But attempts by state governments to free themselves from the direct general property tax have in the main been unsuccessful.

Policies Followed by Different States in the Assessment of Corporations. No two states seem to have followed exactly the same policy in the assessment of corporations, and for this reason it would be difficult to make a simple summary of state assessment of corporations. But, as a general rule, the assessment of local corporations has been left to local officials, while the assessment of the so-called public-service corporations has been done, as a rule, partly by local officials and partly by state boards.[2]

1. Lyon, Taxation, Chap. IV. pp. 96 ff.
2. Lutz, op. cit., pp. 34 ff.

6. The Stage of the State Tax Commission.

Supervision of Local Tax Officials. One of the powers of the state tax commission is that of supervision of local tax officials. This power, like the other powers of the state tax commission, went through the process of historical development and did not spring into being with the creation of the commission. In colonial times several of the colonial legislatures, for example, the legislatures of Massachusetts, Pennsylvania, and Virginia attempted direct supervision of local tax officials. At an early period of our statehood the county auditor in some states was given certain powers of supervision over local tax officials.[1] These powers were, to be sure, very small, and were, as a rule, largely of a clerical nature. Later on, after the state had begun to exercise some influence over tax administration, the state auditor in several of the states was given some degree of supervisory authority over the local assessor.[2] His supervision consisted mainly in preparing blank forms, issuing instructions, and maintaining a certain degree of inspection over assessment returns.

1. Lutz, op. cit., pp. 17, 18.
2. Ibid., p.40.

Indiana Tax Commission Given Power of Supervision in 1891. In the year 1891 the Indiana tax commission was given the power of general supervision over the tax system of that state. [1] This event is epoch making because it marks the beginning of tax supervision by a state board. The powers of supervision granted to the Indiana tax commission were largely advisory. It was given the power to hear appeals, to prescribe forms and blanks, and to visit the county assessors and inspect their work. It is not the power given the Indiana tax commission that is important; but it is the fact that the giving of this power marks the beginning of a development which later on in the hands of the several state tax commissions was to play such an important part.

Special Tax Commissions Precede Permanent Tax Commissions. When it became apparent that the state boards of equalization had failed to accomplish the ends for which they were designed, a movement was started for tax reform. Special tax commissions were appointed in a number of states for the purpose of trying to bring order out of the chaotic condition into which the general property tax had drifted. There were a number of special tax commissions appointed prior to the Civil War but most

1. Lutz., pp. 151 f.

of them accomplished little.[1] The Connecticut special tax commission of 1844 is perhaps the only one of these early commissions of sufficient importance to deserve mention. It was not until after the Civil War that the history of official attempts to reform state and local taxation really begins. The following special tax commissions appointed since the Civil War have had much to do with helping bring about these reforms: the New York special tax commission of 1871; the Massachusetts special tax commission of 1875; the New Hampshire special tax commission of 1876; the Maryland special tax commission of 1888; the Maine special tax commission of 1890; and the Pennsylvania special tax commission of 1890. The special tax commissions were the forerunners of the permanent tax commissions which later on were to supplant the state boards of equalization.

Reasons for the Establishment of Permanent Tax Commissions. As was stated before the forerunners of the permanent state tax commissions were a number of special tax commissions. These special tax commissions were created with the hope that they would be able to devise ways by means of which the inequalities in taxation resulting from the breakdown of the general property tax could be remedied. The special tax commissions recommended, as a cure for the evils growing out of the defects of the general property tax, the establishment of permanent state tax

1. Seligman, op. cit., Chap. XX, pp. 621 -647.

commissions. The first permanent state tax commission was established in Indiana in the year 1891. The advantages of the tax commission over the former state boards of equalization were evident. Other states soon followed the example set by Indiana. At the present time there are in the United States thrity-two states that have either a tax commission or a tax commissioner, and there are a number of other states which have boards under another name that have the same powers as a tax commission.[1]

State Boards of Equalization and State Tax Commissions Compared. State boards of equalization and state tax commissions differ in two important respects: first, they differ historically; and second, they differ functionally. Historically, state boards of equalization were established in an attempt to remedy the evils resulting from the breakdown of the local assessors and the local boards of equalization. Historically, state tax commissions were established in an attempt to remedy the evils resulting from the breakdown of the state boards of equalization. Functionally, state boards of equalization were established for the purpose of equalizing valuations among the different counties of the state. It is true that the later boards of equalization often possessed greater powers than this but the principal power of state boards of equalization was always equalization. Functionally, state tax commissions have a

1. New York Tax Commission, Report, 1919, pp. 81 ff.

number of powers of which equalization is only one.

Administrative Powers of the Tax Commission. The powers of the tax commission areequalization, administration of various kinds of taxes, supervision of local tax officials, the power of reassessment, and in some cases the power to remove local tax officials from office.[1] The state tax commission has been given not only the power of equalization formerly possessed by state boards of equalization, the power to administer various kinds of taxes formerly possessed by state boards for the assessment of corporations and other tax boards, the power of supervision formerly possessed by the state auditor, but has even been given some of the power formerly possessed by the local assessor, that is, the power of assessment. Some tax commissions have power to reassess property which has not been assessed according to law by the local assessor. In some states tax commissions have even been given power under certain conditions to remove local assessors from office.

1. Lutz, "The State Tax Commission and the Property Tax", Annals of the American Academy of Political and Social Sciences, XCV, 276 -83.

Quasi-Judicial Powers of the Tax Commission. So far the powers of the tax commission have been spoken of as though they were strictly administrative in character. As a matter of fact the powers of the tax commission are both administrative and quasi-judicial. It has the power to act as a court or board of review and pass judgment upon matters from any one of the four fields of tax administration over which it has jurisdiction. The judicial authority of the tax commission is in most cases not final; that is, in most cases appeal may be made to the courts. Experience has shown, however, that as a rule the courts have upheld the decisions of the tax commissions, and that their quasi-judicial power is as a matter of fact almost judicial.

Administrative and Quasi-Judicial Powers Illustrated. The process of making a reassessment illustrates quite well both the administrative and quasi-judicial powers of the tax commission. Of course the laws relating to reassessments differ in the different states, and consequently the manner of making reassessments differs also. But a typical reassessment proceeds somewhat as follows: The tax commission either upon investigation of its own or upon complaint brought to it by dissatisfied tax payers or by local tax officals reaches the conclusion that a certain tax district or piece of property probably needs to be reassessed. The commission, therefore, orders a hearing. It sits as a quasi-court and carries on a quasi-trial in which it decides whether or not the property under consideration should be reassessed. It has power to

compel witnesses to attend the trial and also power to compel persons to deliver to it any documents or papers which may have a bearing upon the value of the property concerned. If the commission decides that the property has not been assessed according to law, it orders a re-assessment. The making of the reassessment illustrates the administrative power of the tax commission. As a rule the reassessment is not made by the tax commission itself but by a special agent or special agents appointed by the tax commission. After the reassessment has been completed the commission sits again as a quasi-court; this time as a board of review. It examines the reassessment made by the special agent or special agents and changes it as it sees fit. Tax payers, of course, if dissatisfied with the reassessment have the right to appeal to the courts; but, as was said before, the courts have as a general rule upheld the decisions of the tax commission.

A Typical Tax Commission. A typical tax commission consists of three members appointed by the governor. But sometimes tax commissions consist of only a single commissioner and sometimes of a board of five members. Sometimes the commissioners are elective and not appointive. As a rule a tax commission has the four powers mentioned above. But this is not always the case. Some tax commissions do not have all of these powers, and the ones that do, do not always have them to the same degree.

The Power of Equalization. The tax commission usually has the power to make equalizations only between counties; but sometimes it has the power to make equalizations not only between counties but also between districts and even between individuals. Whether or not the tax commission should have power to make equalizations between districts and individuals is largely a question of just how much centralization and how much home rule is desirable in tax administration.

The Administration of Taxes Not Local in Character. There are certain kinds of taxes, such as taxes on public service corporations, income and inheritance taxes, which are not local in character and which cannot be administered successfully by the local tax units. Such taxes are as a rule administered by state tax commissions. States which have no tax commissions generally either give the state boards of equalization power to administer these taxes or else establish special boards for their administration.

Supervision of Local Tax Officials. Not all tax commissions have the same degree of supervisory power over local tax officials. According to Lutz a tax commission should have extensive powers of supervision.[1]

1. Lutz, "The State Tax Commission and the Property Tax," Annals of the American Academy of Political and Social Sciences, XCV, 277,278.

It should not only furnish all books, blanks, and forms necessary in making the assessment, but also should give the assessor ample instruction as to their use. The commission should see also that the assessors are made thoroughly familiar with the laws relating to taxation. Conferences should be held under the leadership of the tax commissioners for the purpose not only of giving the local assessors instruction in matters relating to taxation but also for the purpose of improving the moral and aggressive spirit of the assessors. Agents should be appointed by the commissioners for the purpose of inspecting the work of the local assessors and giving them needed advice. And above all the commission should impress upon the minds of the local assessors the desirability of assessing property according to the standards set by law.

Reassessment. The power of reassessment differs greatly with the different tax commissions: some do not have it at all; in some it is very limited; in others it is very extensive. A tax commission in order to be most effective should have extensive powers of reassessment. It should have power: to order reassessments either upon its own motion, or upon complaints brought to it by dissatisfied taxpayers or local tax officials; to order reassessments not only of individual properties but also of whole tax districts or counties; to order reassessments of all property

in a tax district or county or of only a special class or classes of property. In some states tax commissions have been given power not only to order reassessments but also to remove local tax officials from office in case the original assessment has not been made in accordance with law. The power of reassessment and removal is the coercive power of the tax commission. It is to the tax commission what the army is to the nation; what the big stick is to the politician; what the willow switch is to the pedagogue. it is the power which enables the tax commission to function. It is the power with which the tax commission becomes a real effective administrative machine, without which it becomes a weak, ineffective, inoperative organization. But the power of reassessment like the army, the big stick, and the willow switch is not to be used often or freely, but only as a last resort when all other devices fail.

CHAPTER II.

REASSESSMENT BY STATES

INTRODUCTION

Reassessment in the Different States. There are in the United States sixteen states that have tax commissions or similar boards which have been given the power of reassessment. As was said before, this power varies greatly in the different states. In some states it is so restricted as to be of little or no assistance to the tax commissions; in other states it has aided materially in equalizing the tax burden. The manner of making reassessments varies greatly. In no two states is the procedure exactly alike. It has not seemed necessary to describe in detail the exact procedure that each of the different tax commissions goes through with in making a reassessment. Kansas has been selected as a fairly representative state and the process of making a reassessment in this state has been disucssed somewhat in detail. As was said before most tax commissions have four administrative functions. In cases where they do not, mention will be made of the fact in the following study of reassessment by states.

Minnesota.

Extent of the Tax Commission's Power of Reassessment.

The Minnesota tax commission has extensive powers of reassessment. It may reassess property upon complaint brought to it by tax payers or local tax officials, or it may

initiate reassessments upon its own motion.[1] It is not restricted to the reassessment of individual properties but may reassess whole districts. While the tax commission does not have power to remove local tax officials from office directly, it does have power to appeal to the governor who has the power of removal. The tax commission has upon two different occasions appealed to the governor to have assessors removed from office, and in both instances the assessors without awaiting action on the part of the governor, have straightway resigned.[2]

The Classified Assessment Law. Ordinarily one finds reassessment associated with the assessment of property at actual cash value, but in Minnesota property is under assessed. However, as the law determines what the percentage of underassessment is to be, the result is practically the same as if property were assessed at its actual cash value. Prior to the year 1914 the law of Minnesota required all real and personal property to be assessed at its actual cash value, but the law had become

1. Minnesota Tax Commission, Report, 1916, p.67.
2. Minnesota Tax Commission, Report, 1910, pp. 22-23.

a dead letter and each assessor had established a standard of his own for making assessments.[1] The legislature instead of facing the matter squarely and insisting that property be assessed at its actual value, compromised matters by passing the classified assessment law which legalized undervaluation. This law set definite standards as to just how much this undervaluation should be. The tax commission has persistently attempted to bring about assessment of property in accordance with the standards established by the classified assessment law.

Commission Has Exercised Power of Reassessment Conservatively. The commission has, except in the case of money and credits, been very conservative about ordering reassessments upon its own motion.[2] It has used the power of reassessment only as a last resort when the impossibility of equalizing the assessment by other methods has been evident. As a rule reassessments have been ordered upon complaints made by taxpayers or county boards of review. It is because of the fact that the tax commission has had the power to initiate reassessments that there has been little occasion for its exercising this power.

1. Minnesota Tax Commission, Report, 1916, pp. 25 ff.
2. Minnesota Tax Commission, Report, 1910, p. 22.

The assessor, conscious of the fact that the tax commission has the power to order a reassessment when his work is not satisfactory, has as a general rule found little difficutly in assessing property at somewhere near the standards as prescribed by law.

The Three Mill Tax on Money and Credits. One distinctive feature about the Minnesota tax law is the special three mill tax on money and credits.[1] This law became effective in 1911. Before this time money and credits had been taxed under the general property tax, but the tax rate had been so high that the greater part of this kind of property had been concealed from the assessors. The three mill tax makes the rate on money and credits much lower than the rate under the general property tax. Since the enactment of this law, a large part of the concealed money and crdits have been placed upon the tax rolls. This fact seems to substantiate the theory that the amount of taxed intangible property varies inversely as the tax rate. In the year 1910, the last year under the old law, there were 6,200 people assessed for money and credits; in the year 1916 the number of people so assessed had increased to 74, 219.[2] In spite of the fact that the tax rate under the

1. Minnesota Tax Commission, Report, 1914, p.44.
2. Minnesota Tax Commission, Report, 1916, p. 68.

three mill tax is many times smaller than the tax rate under the general property tax, the revenue yielded at the present time under the new law is considerably larger than it was in 1910 under the old law.[1] When money and credits were taxed under the general property tax, the tax rate was so high as to be almost confiscatory. Perhaps there was some justification on the part of the tax payer for refusing to list this kind of propery with the assessor; but under the present nominal three mill tax, a tax of only thirty cents on each one hundred dollars, it is hard to see how the taxpayer could justify himself in concealing his money and credits from the assessor. At least the tax commission has taken this attitude.

Reassessments Ordered to Enforce Three Mill Tax. The Minnesota tax commission has used every possible effort to enforce the three mill tax. It is principally in an attempt to enforce this law that the tax commission has ordered reassessments on its own motion.[2] The commission examines the returns of local assessors. If there is any reason to suspect that any assessor has failed to list all of the money and credits in his district, an investigation is carried out. If this investigation seems to confirm the suspicion of the tax commission a

1. Minnesota Tax Commission, Report, 1916, p. 68.
2. Ibid, pp. 67 ff.

reassessment is ordered. Even though the amount of money and credits now taxed under the three mill tax is many times greater than it was in former years under the old law, the tax commission is of the opinion that there is still a considerable amount of this property that is escaping taxation and it is constantly upon the alert to place the concealed property upon the assessment rolls.[1] Perhaps the success of the three mill tax is due in considerable part to the fact that the tax commission has the power to initiate reassessments. This is at least the opinion of one of the former tax commissions which made this statement concerning the power of reassessment: "While this method of correcting negligent work may seem somewhat drastic, failure to do it would soon make the law a dead letter."[2]

Davidson v. Franklin Ave. Inv. Co. It was decided in the case of Davidson v. Franklin Ave. Inv. Co. that in Minnesota the county auditor does not have power to reassess property that has been undervalued.[3] The law gives the county auditor power to reassess real estate which has been omitted from the reassessment but does not give him power to reassess real estate which has been

1. Minnesota Tax Commission, Report, 1916, p.69.
2. Ibid., p. 70.
3. 151 N.W. 537, 129 Minn. 87.

undervalued. In the particular case in question the county auditor reassessed a building which assessors had failed to take note of for a number of years in assessing a certain piece of property. The court decided that the building was a part of the real estate because the law makes no provision for assessing land and buildings separately. The building, therefore, had not been omitted in making the assessment, but the whole piece of property had been undervalued.

State v. Minnesota and Ontario Power Co.[1] The state tax commission of Minnesota, after receiving complaint, ordered the Minnesota and Ontario Power Co., located within the village of International Falls, reassessed. The power company brought suit which was finally settled in the supreme court. The company claimed: first, that the reassessment was void for irregularities in procedure; and second, that the acts creating the tax commission and defining its powers are unconstitutional.

The court pointed out that statutory provisions are of two kinds;[2] directory and mandatory. Directory provisions are intended simply to guide the conduct of officers in the transaction of public business; mandatory provisions are those the disregard of which might effect the rights of the citizen. The provisions which were

1. 141 N.W. 839, 121 Minn. 421.
2. State v. Cudahy Packing Co., 103 Minn. 419, 422, 175 N.W. 646.

violated in making the reassessment were all directory in character. They, therefore, did not effect the rights of the power company, and hence did not make the reassessment void.

The power company said that the act creating the tax commission and defining its powers was unconstitutional for the following reasons: first, the legislature does not have the right to delegate administrative functions to boards; second, the constitution provides for the election of such county and township officers as may be necessary, and for this reason the appointment of special assessors is unconstitutional; third the conferring of powers upon special assessors violates article 3, sec. 1 of the constitution which provides for the distribution of governmental functions among the three departments of the government; fourth, it is contrary to article 9, sec. 1, concerning uniformity and equality of taxation, because a person may be singled out by an uninterested complainant and his property valued upon a different basis from the rest of the property in the community; and fifth, it permits a person to be deprived of his property without due process of law.

The court decided: First, that the legislature has the right to delegate administrative functions to boards and cited as proof Dunnell's Digest, sec. 1600. Second, that there is no constitutional inhibition against the appointment

of a special assessor and for this reason the legislature has power to provide for the same.[1] Third, that the state has as much interest in matters relating to taxation as does the county or district and that the duty of the special assessor is simply to make a report upon which the commission is to act. Fourth, that the persons making the complaint were resident tax payers, and, therefore, it was the commission's duty to act. If they had been non-residents, the case would have been different. And fifth, that the "due process of law" objection is disposed of by the following quotation from the United States Supreme Court: " A law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the Constitution, which declares no state shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity of the amount of it, either before that amount is determined or in subsequent proceedings for its collection."[1]

1. State v. Wyerhauser, 68 Minn. 353, at page 362, 71 N.W. 265, at page 267.

MICHIGAN.

Tax Administration Shared by Three Interlocking Boards.

The board of state tax commissioners of Michigan consists of three members appointed by the governor for a term of six years, one new member being appointed every two years. This board has power to supervise local tax officials and to order reassessments.[1] It does not have power to remove local tax officials from office, but it does have the right to appeal to the governor who has the power of removal.[2] The state board of assessors is a body created for the purpose of assessing the so-called public service corporations.[3] It is composed of the three members of the board of state tax commissioners and the governor. The state board of equalization is composed of the three members of the board of state tax commissioners, the auditor general, and the commissioner of animal industry.[4] This board, as the name suggest, has the power of state equalization. The system of tax administration in Michigan, therefore, is somewhat unusual, as the power is vested not in one board but in three. But, as the tax commissioners make a majority of each of the boards, the result is practically the same as if the three boards were one. The three boards combined possess all of the powers

1. Michigan Tax Commission, Report, 1919-1920, p.5.
2. Lutz, op. cit., pp. 289 ff.
3. Michigan Tax Commission, Report, 1921-1922, p. 22.
4. Michigan Tax Commission, Report, 1919-1920, p. 21.

characteristic of tax commissions; namely supervision of local tax officials, equalization, assessment of public service corporations, and reassessment.

Total County Valuations Determined by State Board of Equalization. The tax unit in Michigan is the township and city ward.[1] The assessor is a local official called a supervisor. This supervisor has some other duties besides those of assessment. All of the supervisors of a county make up the county board of equalization. If any supervisor is dissatisfied with the county equalization, he has the right to appeal to the board of state tax commissioners. The principal duty of the board of state tax commissioners is to see that all property in the state taxable under the general property tax law is assessed at its actual cash value. This board, threfore, has the right to change the county equalization in any way it chooses so as to make it conform to the actual cash value principle. The state board of equalization has the right to alter the total county valuation as determined by the board of state tax commissioners as much as it wishes in either direction.

History of the Power of Reassessment. The board of state tax commissioners of Michigan was created by the tax act of 1899.[2] It was given power to order reassessments upon complaints brought to it by taxpyers but was not

1. Michigan Tax Commission, Reports, 1919-1920, 1921-1922.
2. Lutz, op. cit., pp. 289 ff.

given power to order reassessments upon its own initiative. In the year 1905 it was relieved of a consierable portion of the power it did have by a law which limited its power of review and reassessment to complaints brought to it by taxpayers resident in the district in which the assessment complained of had been made. This act did an injustice to non-resident property owners whose only recourse in case of unjust assessments was the tedious, expensive, courts. In the year 1909 the law was amended and the right of appeal was once more given to any taxpayer. The language of the amendment was so ambiguous that the commission maintained it had been given the right to initiate reviews on its own motion. The matter was finally settled by another amendment to the law in 1911. This amendment gave the tax commission power to initiate reviews and reassessments, and in addition it provided that after a valuation had been placed upon a piece of property or a district by the tax commission, a local assessor could not reduce the valuation for three years without the consent of the commission.

Extent of the Tax Commission's Power of Reassessment.

The principal duty of the board of state tax commissioners is to to see that all property in the state subject to taxation under the general property tax is assessed at its true cash value. The commission has been given almost unlimited power to bring about "true cash value" assessment

in the state of Michigan; it has been limited more by lack of money than by lack of power. The law conferring this unusual grant of authority upon the commission reads as follows: "It shall be the duty of said board to have and exercise general supervision over the supervisors and assessing officers of this state, and to take such measures as will secure the enforcement of the provisions of this act to the end that all of the properties of this state liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their true cash value."[1]

Tax System in a Chaotic Condition in 1911. In the year 1911, the year that the board of state tax commissioners was given power to initiate reviews and reassessments, the tax system of Michigan was in a chaotic condition.[2] There had not only been a mad competition going on among the different county boards of equalization to cut down valuations and thus lessen the burden of state taxes, but there had also been a competition equally mad taking place among the numerous township and ward supervisors, to see which one could, by hook or crook, be the most successful in putting the most inaccurate valuation upon the taxable property of

1. Section 150, Act. No. 153, Public Acts of 1913.
2. Michigan Tax Commission, Report, 1919-1920, p. 19.

his district. Investigation by the tax commission has shown that prior to the year 1911, the year that the commission was given power to initiate reassessments, the assessed valuation of general property in the different counties of the state ranged from forty percent to eighty percent of the actual cash value.[1] The present tax commission asserts that property is now being assessed at practically its cash value. The assessed valuation of the different counties of the state, as made by the local assessors in the year 1919, was over 90% of the true cash value of the State.[2]

Results of the Power of Reassessment Shown Statistically.

Since the introduction of effective reassessment in Michigan, taxation has become more uniform. There is good reason to suppose, therefore, that this increase in uniformity is the result of the effective reassessment. Table I shows the different counties of the state of Michigan grouped in percentage groups representing the ratio of equalized to full value for the years 1911 and 1914. In the year 1911, the year that the Michigan tax commission was given power to initiate reassessments on its own motion, property was assessed on the average in Michigan at 76.6% of its actual cash value, and the standard deviation from this

1. Michigan Tax Commission, Cash Value Assessments, p. 7.
2. Michigan Tax Commission, Report, 1919-1920, p. 20.

average was 6.25%. Three years later, in the year 1914, property was assessed on the average at 86.9% of its actual cash value and the standard deviation was only 3.25%. This shows that after the tax commission was given the power to initiate reassessments on its own motion property was not only assessed at more nearly its actual cash value but also assessments became more uniform throughout the state.

TABLE I.

Number of Counties in Percentage Groups Representing the Ratio of Equalized to Full Value.[I]

Percentage Groups	1911	1914
Total	82	83
55 - 59.9	1	--
60 - 64.9	5	--
65 - 69.9	7	--
70 - 74.9	7	1
75 - 79.9	42	4
80 - 84.9	15	4
85 - 89.9	5	70
90 - 94.9		3
95 and above.		1

Year 1911	Year 1914
Mean - 76.6%	Mean - 86.9%
S.D. - 6.25%	S.D. - 3.25%

I. Compiled from data in the reports of the State Board of Equalization.

Table II, taken from the Eleventh Annual Report of the Michigan Board of State Tax Commissioners is a somewhat inaccurate barometer of the effect that the power of reassessment has had upon the assessed valuation of property in Michigan from the year 1911 to the year 1919. (The tax commission, as stated above, was given power to initiate reassessments on its own motion in the year 1911). It is to be borne in mind, however, that the increased valuation which took place between the years 1911 and 1919 was not due entirely to more accurate assessments, but partly to an increase in the amount of property assessed and partly to an increase in property values. The table shows an increase in assessed valuation of $2,605,923, 623 or 137% in eight years.

Table II.

Total	assessment	of	the	State	1911 ---	$1, 898,057,358
"	"	"	"	"	1912 ---	2, 078,694,409
"	"	"	"	"	1913 ---	2, 345,695,709
"	"	"	"	"	1914 ---	2, 765,765,636
"	"	"	"	"	1915 ---	2, 968,236,813
"	"	"	"	"	1916 ---	3, 625,142,971
"	"	"	"	"	1917 ---	4, 027,364,717
"	"	"	"	"	1918 ---	4, 218,781,678
"	"	"	"	"	1919 ---	4, 503,980,981[1]

1. Michigan Tax Commission, Report, 1919-1920, p.20.

The Reassessment of Entire Counties Since 1912.

Until the year 1911 the Michigan tax commission had been compelled by law to confine its reassessment proceedings to individual complaints made by taxpayers. The fault with this method of reasessment was that even though relief might be given to the person making the complaint there were often other persons equally deserving within the same district. After the increased powers had been granted to the commission, it launched forth in the year 1912 upon a program of reassessing all of the property in entire counties.[1] Between the years 1912 and 1920 the commission reassessed practically every county in the state. Not long after the reassessing of entire counties was begun it was discovered that the local assessors did not increase the valuation from year to year to meet changing conditions, but left it practically as fixed by the commission. To counteract this traditional tendency to undervaluation on the part of the local assessors it was found necessary to reassess some of the counties a second time. On the whole, however, the work seems to have been well worth the effort and to have resulted in greatly improved assessments.

1. Burtless, Secretary Michigan State Board of Tax Commissioners, 1924.

Reassessment Unnecessary if Local Officials Follow Instructions. As was stated before, one of the powers of the board of state tax commissioners is that of supervision of local officials. It has been the policy of the tax commission to cooperate with local officials and to instruct them in the proper method of valuing property. Whenever local officials, however, do not comply with the prescribed instructions it will be necessary to order reassessments. It is not thought, however, that many reassessments will be necessary as the tax laws of Michigan now contain a provision that where an assessing district is reassessed by the commission and the assessment is changed in excess of 15%, the entire cost of such reassessment must be borne by the district so reassessed.[1]

Few Reassessments Since 1920. Since the year 1920 the tax commission has been so fully occupied with the process of equalization that it has had little time to conduct reassessments, and what reassing it has done has been confined almost exclusively to complaints brought to it by individual tax payers.[2] The tax commission does not only supervise local officials and conduct reassessments, but also aids the state board of equalization in making equalizations.[2] Before each state equalization is made, it prepares a list of estimated valuations of the different counties of the state and presents this list to the state

1. Burtless, Sec. Micigan State Board of Tax Commissioners, 1924.
2. Michigan Tax Commission, Report, 1919-1920, p.21.

board of equalization to be used in making the state equalization. Prior to the year 1921 state equalizations were made only twice every five years, but an amendment to the law in that year required that state equalizations in the future be made annually. [1] This has kept the tax commission so busy preparing lists of estimated county valuations that it has had little time to devote to the work of reassessment. It is impossible for the tax commission with its present limited supply of money to conduct an entire reassessment of the state each year; so the list of county valuations that it prepares each year for the state board of equalization is for the greater part only estimates. These estimated valuations are obtained as a rule by sampling; that is, by assessing only portions of the property in each of the different counties and then guessing at the value of the rest.[2]

Board of State Tax Commissioners v. Board of Assessors of Grand Rapids. The case of Board of State Tax Commissioners v. Board of Assessors of Grand Rapids is a mandamus action by the board of state tax commissioners to compel the board of assessors of the city of Grand Rapids to deliver the assessment rolls of said city to the tax commission for review.[3]

1. Michigan Tax Commission, Report, 1921-1922, p.2.
2. 124 Michigan 491.
3. Michigan Tax Commission, Report, 1921-1922, p.2.

The board of assessors refused to deliver up the assessment roll on the grounds that the state did not have authority over the matter of assessment as it is a purely local matter.

The court decided that since the constitution requires property to be assessed at its true value , the state tax commission had power to compel the board of assessors to deliver up the tax roll in case they had failed to comply with the law.

WISCONSIN.

Powers of the Tax Commission. The powers of the Wisconsin tax commission are: first, the supervision of local tax officials; second, the administration of corporate, income, and inheritance taxes; third, the state assessment; and fourth, reassessment.[1]

Reassessment from 1905 to 1910. The original reassessment law of Wisconsin was enacted in the year 1905. It says in substance that when it appears to the tax commission on its own motion or on a complaint and summary hearing "that the assessment of property in any assessment district is not in substantial compliance with law and that the interest of the public will be promoted by a re-

1. Lutz, op. cit., pp. 240 ff.

assessment of such property" the commission shall have authority to order a reassessment of the property of the district. Six reassessments were ordered by the Wisconsin tax commission in the year 1906.[1] The supreme court of Wisconsin then declared the act unconstitutional and no more reassessments were held until the year 1910. In the year 1910 in the case of Hessey v. Daniels the former decision of the court was reversed and the law of 1905 was declared unconstitutional.

Reassessment from 1910 to 1917. From the year 1910, the year that reassessment became effective, to the year 1917 more progress was made toward systematizing assessments in Wisconsin than during all the previous years of her history. In the year 1911 property was assessed on the average in Wisconsin at less than 65% of its true value, while specific descriptions of property were assessed all the way from 10 to 200% of their value; in the year 1917 property was assessed on the average at 85.14% of its value and inequalities in valuation had been largely removed.

The commission exercised the power of reassessment conservatively and only ordered reassessments on its own motion in extreme cases, when local officials failed or refused to correct inequalities in assessments.

1. Lutz, op. cit., pp. 240 ff.

Reassessment since 1917. In the year 1917 a new law was passed which deprived the tax commission of power to order reassessments on its own motion. The law was soon amended, however, and the lost power was restored to the tax commission. This amendment so offended local bosses that the right of the tax commission to initiate reassessments was once more withdrawn and the statute was amended again. The new amendment required a petition of the owners of 10% of the taxable property in a district before a reassessment could be ordered. Later the percentage was reduced to 5% which is the present law.

Defects of the Present Reassessment Law. The present reassessment law of Wisconsin has a number of defects.[1] First, the tax commission does not have power to initiate reassessments on its own motion. Experience seems to show that without this power a tax commission is unable to bring about an equitable distribution of taxes. Second, the law works to the disadvantage of the small taxpayer as it is much more difficult for him than for the large land owner to petition the tax commission for a reassessment. As a matter of fact the reassessment law, as it now stands, practically denies the remedy of reassessment to the small taxpayer. Third, the maximum compensation that can be

1. Wisconsin Tax Commission, Report, 1918, pp. 22, ff.

to assessors appointed to make reassessments is five dollars a day for both services and expenses. This compensation is entirely inadequate to secure a type of assessor capable of making an intelligent reassessment. Fourth, according to the Wisconsin law, whenever a reassessment is made all of the property in the district must be reassessed. It often happens, however, that complaint is made concerning only one or a few classes of property in a district. In such cases there is much waste of time and expense in assessing all of the property of the district. The laws of Michigan and Minnesota give the tax commissions of those states power to reassess specific descriptions or classes of property without making a reassessment of all of the property in the entire district. A similar law would be of advantage to the state of Wisconsin.

Attorney General v. Hamerlund. The case of Attorney General v. Hamerlund is a mandamus action to compel the city clerk of the city of Janesville, Wisconsin to extend upon the tax roll of said city the indebtedness of that city for the expenses of a reassessment.[1]

The court decided that the constitutionality of the reassessment law had been established by the case of Hessey v. Daniels. In general a conclusion in favor of the constitutionality of a law carries with it the means

1. 159 Wisconsin 315.

necessary for the execution of that law, such as, expenses, etc. If a community violates the tax laws and it is necessary to order a reassessment, it is a just penalty that the community pay the expenses of the reassessment. More than that it would be unjust to make the whole state pay this expense. It was, therefore, just for the city of Janesville to pay the expenses of the reassessment.

Hessey v. Daniels. In the case of Hessey v. Daniels mandamus proceedings were brought against Daniels, town clerk of Iron River, Bayfield County, for the year 1919 to compel him to make out a tax roll for said town on the basis of a reassessment made previous to this time.[1]

Daniels justified his refusal to make out a tax roll in accordance with the reassessment on the grounds that chapter 259, Laws of 1905 is unconstitutional. This law gives the tax commission power to order reassessments when the original assessment has not been made in compliance with law and when a reassessment would be to the interest of the public. He said that the assessment made by the local officials was the only lawful assessment.

The tax commission showed that the property in question had not been assessed according to law, and that the interest of the public demanded a reassessment.

1. 143 Wisconsin 649.

The court decided that so long as local officials obey the laws, the state has no right to interfere with them but when local officials do not obey the laws, the state has the right to see that the laws are enforced.

Knaus et al. v. Rollof et al.[1] In the case of Knaus et al. v. Rollof et al. the state tax commission of Wisconsin ordered a reassessment of the town of Morgan, Oconto County, two years after the original assessment had been made. A number of taxpayers of Morgan brought suit to have the reassessment stopped. The circuit court sustained the demurrer to the complaint interposed by the defense and the case was carried to the supreme court of Wisconsin. The plaintiffs maintained that the tax commission did not have authority to call a reassessment two years after an original assessment had been made. They said that such an assessment was extremely unjust as much property had changed hands within the last two years, and that the reassessment would cause an unfair burden to fall upon the new property holders.

It was the opinion of the court that there is no limitation upon the time when the tax commission may order a reassessment.[2] The court said that it was quite evident

1. 190 N.W. 463.

2. State ex rel. Town of South Range et al. v. Tax Commission, 168 Wisconsin 253, 169 N.W. 555

from the legislation upon the subject that the commission had been left with its hands free to order a reassessment whenever it thought that the interest of the public would be promoted thereby. The court further said that it would not interfere with any of the acts of the state tax commission unless they became so unreasonable and arbitrary as to indicate a total lack of judgment or discretion. The supreme court affirmed the order of the circuit court sustaining a demurrer to the complaint.

South Range v. Tax Commission. The case of South Range v. Tax Commission is an action brought by the citizens of South Range in order to establish the illegality of a reassessment commenced in the city before mentioned after the tax roll had been delivered to the town treasurer.[1] The relators cited as proof for the illegality of the reassessment section 1087-57, Laws of Wisconsin. This section says that a reassessment may be completed after the tax roll has been completed, but does not say that it can be begun after that date.

The court decided that the correctness of this claim must be determined by the language and intent of section 1087-45, Statutes of Wisconsin. In substance this section says that whenever it shall appear to the tax commission that the assessment in any assessment district has not been

1. 168 Wisconsin 253.

made in substantial compliance with law and when the interest of the public will be promoted by a reassessment, the commission has power to order a reassessment made. The court said that it was apparent that before a reassessment could be ordered two things must exist: first, the original assessment must not have been made in substantial compliance with law; and second, it must be to the interest of the public to have a reassessment made. As the legislature has fixed no time limit during which reassessments can be made, this matter has been left to the decision of the tax commission with the limitation that public interest must be promoted by the reassessment.

Culliton v. Bentley. The case of Culliton v. Bentley is an action brought in equity by a taxpayer of the town of Summit, in Douglas County, to prevent the illegal expenditure of the funds of the town in the payment of the expense of a reassessment.[1]

The plaintiff claimed that the reassessment was illegal because the original assessment had been conducted in accordance with law since no taxpayer had made complaint to the board of review.

The trial brought out the fact that not all property had been assessed according to its true cash value.

The court decided that section 1087-45 et seq., originally

1. 165 Wis. 262.

chapter 259, Laws of 1905 was applicable to this case. This section provides in substance that whenever it appears to the tax commission that an assessment has not been made in substantial compliance with law and when the interest of the public will be promoted by a reassessment, the tax commission has the power to order that a reassessment be made. The constitutionality of this act was sustained in the case of Hessey v. Daniels. The plaintiff tried to prove that the assessment had been made in conformity to law because no one had complained to the board of review, but the law says that property shall be assessed at its actual cash value and in this assessment it was not. It therefore follows that the reassessment was made in compliance with law and that it is the duty of the town of Summit to pay the expense of the reassessment.

Blair v. Erickson. The case of Blair v. Erickson is a mandamus action to compel the town clerk of Oakland, Douglas County, to use reassessment rolls as required by law in making his tax roll.[1]

The plaintiff alleged that reassessments had been made in the years 1915, 1916, 1917, and 1918, and that no recognigition had been taken of them in making out the several tax rolls. Moreover effort had been made to make

1. 171 Wisconsin 205.

Erickson take account of these reassessments in making out the tax roll, but he had refused to do so.

The defendant said that he had refused to take notice of the reassessment for the following reasons: first, the affair was a local matter and the remedy of the local court was sufficient; second, a considerable amount of land had changed hands since the year 1915 and it would be a great injustice to take account of the several reassessments so long after they had been made; third, that the reassessments were unequal and unjust because a large part of the land was not assessed at its true market value; fourth, that required notices had not been made according to law; fifth, that the reassessment rolls that were not used in the tax roll next following have no longer any force or validity. As proof for his fifth reason for refusing to use the earlier assessment roll he cited section 1087-57 of the Laws of the State which in substance says that if a reassessment is not completed in time to take the place of the original assessment that it shall be taken account of in the tax roll for the following year.

The court decided: first, that it had jurisdiction over the case and cited as proof the Income Tax Cases; second, that the town clerk is a ministerial and not a judicial officer and that he does not have authority to pass

judgment upon matters relating to taxation; and third, that section 1087-57 of the Laws of the State is a continuing mandate to the town clerk, that is, it applies not only to the reassessment of the previous year but to all previous assessments which have as yet not been taken into account in making out the tax rolls of previous years. The court therefore ordered Erickson to perform his duty and take account of the before-mentioned previous reassessments in making out the tax roll.

WEST VIRGINIA.

Provisions of Tax Act of 1904. The office of tax commissioner was created in West Virginia by the tax act of 1904. This act provided for: the creation of the office of state tax commissioner; the assessment of certain kinds of corporations by the board of public works; annual assessment of all property, including real estate, at its true and actual value; local election of a county assessor in each county for a four year term; and review of assessments by the assessor and his assistants.[1] In the year 1907 the last provision of the act was changed and the board of public works was given power to appoint the county boards of review.

1. Lutz, op. cit., pp. 331 ff.

Unusual Features of the Tax Act of 1904. There was in this act of 1904 at least two unusual features: first, the board of public works and not the the tax commissioner was made the real administrative head of the tax system; second, no provision was made for state equalization of assessments.[1] The functions of the board of public works with respect to taxation were as follows: to assess certain kinds of corporations, to appoint the local boards of review, and to sit as a quasi-court and revies matters relating to assessment. The tax commissioner was little more than a figurehead. He could not even attend the meetings of the board of public works unless he was invited to do so by the board or the governor.[2] The only important power that was given the commissioner was that of supervision of local officials; and even this power was more apparent than real, as the commissioner had no way of enforcing his orders. It is true that he had the right to appeal to the courts in case an officer refused or neglected to perform his duty. But it is one thing to accuse a person and another to prove him guilty. Experience has shown that it is extremely dificult to prove anyone guilty of deliberate or willful intent and because of this fact practically no suits have been brought. The power of the

1. West Virginia Tax Commission, Report, 1921-1922, Introductory Chapter, p. 4.
2. West Virginia Assessment Laws, 1921, Sec. 3.

tax commission, therefore, under the law of 1904 was in reality only advisory.

Perhaps the most unusual thing about the tax law of 1904 was the fact that it made no provision for state equalization of assessments.[1] The legislators that were responsible for the law had become inoculated with the theory that state taxes and local taxes ought to be separated that the state should get its revenue entirely from indirect taxes, and that it should not levy a direct tax upon the property of the local tax units. These legislators looked ahead to a day when state and local taxes would be entirely separated and the tax law of 1904 was passed in anticipation of that day. Their dream, however, was not realized. The large state debt which appeared in West Virginia at the close of the World War, caused not only by the war itself but also by increased state expenditures made the state more dependent than ever upon the local tax unit for revenue.

Tax Commissioner Given Power of Reassessment in 1921.

Under the tax law of 1904 undervaluation ran wild.[2] Both tax commissioner and board of public works were powerless to prevent it, for neither of them possessed either the power of equalization or the power of reassessment.

1. West Virginia Tax Commission, Report, 1921-1922, Introduction Chap. p. 8.
2. West Virginia Tax Commission, Report, 1921-1922, Introductory Chapter, p. 9.

When it became evident that the state would not be able to support itself entirely by indirect taxes, a movement was started for reform. The reform movement culminated with the passage of the Sanders law of 1921. The Sanders law made a number of changes of minor importance in the tax laws of West Virginia. It made, however, one contribution of major importance; namely, it gave the tax commissioner the power of reassessment. The tax commissioner, who before this time had been little more than a figure head, was now transformed into a real executive officer; an officer who had power not only to admonish but also power to compel.

Extent of the Tax Commissioner's Power of Reassessment.

That portion of the Sanders law which elevated the tax commissioner from an object of pity to an officer of respect reads as follows: "It shall be the duty of the assessor in each county to assess the value of all real estate annually in said county as well as the value of all personal property therein, at the true and actual value. If at any time after the beginning of the assessment year, it be ascertained by the state tax commissioner that the assessor or his assistant, of any county is not complying with this provision or that he has failed, neglected, or refused, or is failing, neglecting, or refusing after five days notice to list and assess all real property therein at its true and actual value, as in this act on provided, the state tax commissioner may order and direct a re-assessment of any or

all of the property in any county, district, or municipality, where any assessor, or assistant, fails, neglects, or refuses to assess the property in the manner herein provided. And, for the purpose of making such assessment and correction of values in accordance with this provision, the commissioner may appoint one or more special assessors, as the necessity may require, to make such reassessment in any such county --- "

The Power of Reassessment Enables Tax Commissioner to Enforce Law. As was stated before the tax law of 1904 required that all property be assessed at its true and actual value. But it was not, as there was no power to compel the enforcement of the law. The Sanders law of 1921 supplied this lacking power by giving the tax commissioner authority to make reassessments. A comparison of the assessed valuations of the several counties of the state of West Virginia before and after 1921, the year of the passage of the Sanders law will give some idea of the effectiveness of the power of reassessment to bring about valuation of property at its true and actual value.

Reassessment Has Increased Valuations. According to Hallanan, former tax commissioner of West Virginia, valuations, in the year 1920, on the "true and actual value" basis,

ranged in different counties of the state all the way from 23% to 87%.[1] This means, of course, that in some counties the taxpayers were paying proportionately practically four times as much state tax as were the taxpayers of some other counties. The total assessed valuation of all of the counties of West Virginia in 1920, the year before the passage of the Sanders law was $1, 579, 594, 399. Two years later, in the year 1922, the total assessed valuation had increased to $2,092, 571, 862. This is an increase of 32½%. The increase in valuation in some of the counties of the state is astounding; for example, Boone County in the year 1921 shows an increase in valuation over the previous year of 61%, and Cabell County in the year 1922 shows an increase of 70% over the valuation of the year 1921. It appears that it was not difficult for the counties of West Virginia to assess property at somewhere near its "true and actual value" after the reassessment provision was made a part of the tax laws of the state.

State Not Yet on an Actual Value Basis. During the year 1921 it was only necessary to order one reassessment. This reassessment was ordered for Fayette County on the grounds that the assessor, a man named Rocke, had violated the law, since he had failed to assess property at its "true and actual value."[2]

1. West Virginia Tax Commission, Report, 1921-1922, Introductory Chapter, p. 9.
2. State Tax Commission v. Rocke, 113 S.E. 647.

Rocke claimed that the law creating the office of tax commissioner was unconstitutional and refused to turn over the assessment books to the special assessor. The state tax commissioner brought suit against Rocke. This suit was finally settled in the supreme court of the state. The court decided that the law was consitutional and ordered Rocke to surrender the assessment books. In spite of the great improvement that has been made in the valuation of property in West Virginia since the passage of the Sanders law, Hallanan says that the state is not yet on a strictly "true and actual value" basis. He says that it will take several years more of diligent effort before this goal can be reached.[1]

State Tax Commission v. Rocke, County Assessor. In the case of the State Tax Commission of West Virginia v. Rocke, County Assessork, Rocke, a county assessor, refused to deliver to the special assessor, appointed by the tax commission, the land books, blotters, and other books and papers necessary to the work of reassessment.[2] The reassessment had been declared because Rocke in making the original assessment had not fulfilled all of the requirements of the law in so much as he had not valued real estate at its

1. West Virginia Tax Commission, Report, 1921-1922, p.9.
2. 113 S.E. 647 .

actual cash value. Rocke declared that the statute giving the tax commission authority to correct errors and omissions in the work of the office of assessor was invalid, because the right had been vested in the assessor by the state constitution to exercise full powers of valuation and assessment. Against the validity of the statute, Rocke cited several provisions of the state constitution; namely, sections 1 and 2 of article 9, section 6 of article 4, and article 5; in addition he cited the Fifth and Fourteenth Amendments to the Constitution of the United States.

The court decided that sections 1 and 2 of article 9, and sections 6 of article 4 of the state constitution did not have much bearing upon the powers of the assessor. Rocke tried to show by section 5 of the state constitution that assessment of property for taxation is a judicial function and cannot be vested in an executive office such as that of the state tax commission. The court was of the opinion that full power and authority had been delegated to the legislature over the subject of valuation of property for the purpose of taxation. They cited as proof section 1 of article 10 of the state constitution, which reads as follows:

"Taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be

taxed in proportion to its value, to be ascertained as directed by law."

The court stated further that it had been the custom of the legislatures in the past to exercise power over reassessments; and they cited a number of examples in which this was done. The court therefore ordered Rocke to perform his duty as required by certain provisions of section 12 of chapter 29 of the Code, as amended by chapter 152 of the Acts of 1921; in other words the court ordered Rocke to deliver the books and papers of his office to the special assessor to be used in the reassessment ordered.

NEW YORK.

Powers of the Tax Commission. The tax commission of New York has the following powers: supervision of local officials; administration of corporate and several other kinds of special taxes; and a very restricted power of reassessment.[1] The state equalization in New York is made by the state board of equalization which consists of the commissioners of the land office and the state tax commission.[2] This board makes annually an equalization table which furnishes the basis of the distribution of the state tax among the several counties of the state. The table is made

1. Lutz, op. cit., pp. 182 ff.
2. New York Tax Commission, Report,1919, p. 15.

from data furnished by the state tax commission.

Extent of the Tax Commission's Power of Reassessment.

The tax commission's power of reassessment as defined by section 173 - a of the Tax Laws of New York is as follows: "At any time within thirty days after the completion of the assessment roll by the board of assessors of any tax district, if the tax commission shall have reason to believe from information furnished by any taxpayer or otherwise, that such assessment roll shows an undervalration, inequalities, omissions or irregularities sufficient to make it inequitable as between owners of real property taxable within the tax district, or as between the tax district and other tax districts in a county or in a city comprising more than one county, it may apply to a justice of the supreme court of the judicial district within which such tax district is wholly or partly located for an order directed to the assessor of such tax district requiring such assessor to show cause at a time and place specified therein why such reassessment roll should not be corrected or cancelled and a new assessment roll be made by the assessors."

From the above section of the tax laws it is clear that the tax commission does not have power to order a reassessment on its own motion. It must first secure an order from the court. Experience has shown, however, that there is so much difficulty and expense involved in securing such

an order that this mode of procedure is impractical.[1] The reassessment provision of the tax laws has, for this reason, become practically a dead letter. The commission is attempting to equalize taxation in other ways.

Tax Commission Began Cash Value Campaign in 1915. The New York tax commission was created in the year 1896. Its powers of supervision were small at first and it made little attempt to regulate taxation.[2] In the year 1915 its supervisory powers were considerably increased and it launched forth upon a program of tax regulation. As the system of reassessment in New York is impractical, the method of supervision employed by the commission has been largely educational and hortatory. The commission has attempted to do three things: first, to determine what the property in the different counties is actually worth; second, to instruct local boards as to the actual value of this property; and third, to persuade local assessors to assesss property at its actual cash value. The purpose of the whole system has been, of course, an attempt to bring about cash value assessments. As aids to accomplish this end the tax commission created in 1915 the bureau of local assessments, and in the year 1916 called the first state conference of local assessors.[3]

1. New York Tax Commission, Report, 1919, p. 9.
2. Lutz, op. cit., pp. 184.
3. New York State Tax Department, Bulletin, 1916, I, 8 ff.

Cash Value Campaign Failed. New York is a good example of a state which has attempted to increase valuations without the aid of reassessment.(The power of reassessment is so restricted in New York that for all practical purposes one might say that it does not exist.) Although the New York tax commission has since the year 1915 made a strenuous effort to secure cash value assessments, figures do not seem to show that it has accomplished a great deal.[1] In the year 1915, the year that the actual value campaign began, general property was assessed in New York on the average at 73% of its actual cash value; four years later, in 1919, it was assessed at only 69%. Moreover the percentage of valuation varied greatly in the different counties of the state. In the year 1919 property was assessed in Sullivan County at only 22% of its value while in Kings County it was assessed at 94%. Urban property was in the main assessed considerably higher than rural property.

Results of the Cash Value Campaign Shown Statistically.

Attempts to make taxation more uniform in the state of New York, under an ineffective system of reassessment have failed. Table III shows the different counties in the state of New York, grouped in percentage groups, representing the ratio of equalized to full value for the years 1915

1. New York Tax Commission, Report, 1919, pp. 126, 127.

and 1919. In the year 1915, the year that the New York tax commission commenced its cash value campaign, property was assessed on the average in New York at 74.35% of its actual cash value, and the standard deviation from this average was 9.6%. Four years later, in the year 1919, property was assessed on the average at only 69.1% of its actual value and the standard deviation had increased to 14.05%. This shows that a cash value campaign in the state of New York, which has an ineffective system of re-assessment, resulted not in an increase but in an actual decrease in the percentage of assessed valuation to true valuation, while at the same time assessments became less uniform than they were before.

TABLE III.

Number of Counties in Percentage Groups, Representing the Ratio of Equalized to Full Value.[1]

Percentage Groups.	1915	1919
Total	62	62
20 - 24.9		1
25 - 29.9		0
30 - 34.9		0
35 - 39.9		1
40 - 44.9	1	1
45 - 49.9	0	1
50 - 54.9	2	5
55 - 59.9	2	4
60 - 64.9	3	9
65 - 69.9	8	11
70 - 74.9	13	9
75 - 79.9	19	8
80 - 84.9	7	3
85 - 89.9	4	4
90 - 94.9	3	4
95 - 99.9		1

Year 1915	Year 1919
Mean 74.35%	Mean 69.1%
S. D. 9.6 %	S.D. 14.05%

1. New York Tax Commission, Report, 1919, p. 127

KANSAS.

Reassessment, How Ordered. The Kansas tax commission has power to order reassessments, either upon complaint or upon its own motion, of all or any part of the taxable property in any assessment district in the state.[1] The commission may, upon receiving complaint from the county assessor or any deputy assessor or the board of county commissioners of any county, order a summary hearing held. If at the hearing it appears to the tax commission "that the assessment of property in any assessment district in such county is not in substantial compliance with law and that the interest of the people would be promoted by a reassessment" the commission has power to order that a reassessment be made. The commission may appoint one or more special agents or assessors to carry out the reassessment, the expense of which is to be borne by the county in which the assessed district is located. The commission may, also, if it appears that the public interest would be promoted thereby order a reassessment on its own motion.

Due Notice of Hearing Must Be Given. In case the tax commission, upon receiving complaint, decides that a hearing should be held, it must give due notice of such

1. General Statutes of Kansas, 1915, Art. 11310.

hearing. In case the taxing district is a city, due notice of the time and place fixed for the hearing must be mailed to the city clerk at least eight days before the date set for the hearing. If it is a township, notice must be sent to the township clerk.

Special Assessors. Special assessors, appointed by the tax commission to conduct a reassessment must take oath to the effect that they will support the constitution of the United States and the constitution of the state of Kansas, and that they will faithfully carry out the reassessment to the best of their ability and file the same with the tax commissioner. Special assessors are required to perform all of the duties and are subject to the same restrictions and penalties imposed upon deputy assessors. The law says that they shall have access to all public records and files, and all other statements, memoranda, etc. which may be of service in conducting a reassessment, and that they shall also have possession of the assessment roll and all other statements and forms necessary in making the reassessment.

The Reassessment Completed. When the reassessment is completed it shall be treated exactly like an original assessment; that is, it shall be equalized by the county board. Appeals may be made from the action of any officer in the same manner as they are made in the case of an original assessment.

ALABAMA.

Extent of the Tax Commission's Power of Reassessment. In Alabama the local assessment roll may be revised in two ways: first, by the county tax commissioner who has power to increase the valuation of underassessed property or to add back taxes for five years; second, by the tax commission which has the power to order reassessments. These reassessments may be conducted either by the county tax commissioners or by a special agent of the tax commission.[1] The power of reassessment of the tax commission is considerably strengthened by the fact that valuations made by the commission in reassessments cannot be lowered later except by the commission's consent; that is, as long as the property remains in substantially the same condition.[2]

State Tax Commission v. Bailey and Howard. The constitutionality of the law establishing the state tax commission was upheld in the case of the State Tax Commission v. Bailey and Howard.[3] The petition in this case said that the tax commission did not have power to change an assessment made by a county board of review.

1. Lutz, op. cit., pp. 559, 560.
2. Lutz, op. cit., pp. 556, 557.
3. 60 So. 1913, 179 Alabama 620.

The court decided: that the legislature has the right to provide for the levy and assessment of taxes as long as it acts within the limits of the constitution. The legislature had established a tax commisssion, the creation of which violated no provision of the constitution, which had been given general supervisory powers over all local tax officials. Section 2223 of the Code of 1907, subdivision 13, gives the tax commission authority to set aside illegal valuation of property made by a county board of review and power to reassess or revalue said property. The tax commission, therefore, had power to change an assessment made by a county board of review and was violating no provision of the constitution in doing so.

State Tax Commission v. Tennessee Coal, Iron, and Railway Co. The question as to whether or not a tax commission has power to compel a taxpayer to produce books, records, and documents of a financial character, in order to aid the commission or agents thereof in ascertaining a correct valuation of the property of said taxpayer, seems to have been definitely settled in the affirmative, by the case of the State Tax Commission of Alabama v. Tennessee Coal, Iron, and Railway Co.[1] As this question is so vital to the powers of reassessment and to the powers of the tax

1. 89 So. 176.

commission, the case will be discussed somewhat in detail.

This case, the State Tax Commission v. Tennessee Coal, Iron, and Railway Co., originated in the circuit court of Jefferson County, Alabama.[1] The state tax commission of Alabama, established by the revenue act of Sept. 15, 1919, decided to reassess the Tennessee Coal, Iron, and Railway Co., located in Jefferson County. The corporation refused to give to the agents of the commission certain books and records kept and used in the conduct of the business and necessary to the ascertainment of the facts and elements of value.

The tax commission commenced mandamus proceedings against the corporation. The petition served by the tax commission upon the corporation set up two main grounds as bases for its authority and right to obtain the information sought: first, the tax commission maintained that it had been given power by the Revenue Act of September 15, 1919 to see that the burden of taxation is justly distributed throughout the state; second, it maintained that when the original assessment had been made, it had been without access to the books and records of the corporation; that the tax commission had asked the corporation for permission to examine its books, but the request had been denied. The tax commission had, therefore, ordered a a reassessment.

1. 89 So. 176.

The petition further said that in order to make a correct valuation of the property in question, it would be necessary to have access to the books and records of the corporation. In order to get access to said books and records, the commission issued and served upon said corporation a subpoena, duces tecum, to produce before it the aforementioned books, records, and documents.

The corporation replied with a demurrer in which it gave its reasons for not turning over said books to the commission. The two most important of these were: first, the petition was indefinite as to just exactly what books were desired (the corporation thought that this ambiguity of language was sufficient to excuse it from delivereing the books); second, both the Fourteenth Amendment to the federal Constitution and section 5 of the Alabama constitution denied the right of any authority to deprive persons of property without due process of law. The corporation maintained that the tax commission had no authority to compel it to deliver up said books and records as it was protected in its right to keep same by not only the constitution of Alabama but also the federal Constitution of the United States.

The demurrer was sustained by the circuit court and the case was appealed to the supreme court of Alabama. The supreme court of Alabama decided that the corporation was not justified in refusing to submit its books for

examination on the grounds that the tax commission had been indefinite as to just exactly what books were wanted. The court said that the language of section 138 of the Revenue Act of 1919 is broad in its grant of authority to require information as to the property of the taxpayer and the production of records, papers, and documents. And that it would be assumed when the commission demanded books, records, etc, that it meant those books, records, etc. which had a bearing on the taxable property in question.

The real question at issue was this, Did the commission have power to demand these books? The court decided that this depended upon the interpretation given to the Fourth Amendment to the federal Constitution and, section 5 of the Alabama constitution. Both of which are practically parallel in meaning.

The Fourth Amendment to the federal Constitution is as follows:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

Section 5 of the Alabama constitution reads:

"That the people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches and that no warrant shall issue to search any place or to sieze any person or thing without probable cause, supported by oath of affirmation."

The prohibition of the Fourth Amendment is against all unreasonable searches and seizures. The question at issue was, then, simply this, to decide whether it is reasonable or unreasonable to expect a corporation to turn over its books to a tax commission.

The case most often cited as to what constitutes reasonable or unreasonable search or seizure is the case of Boyd v. United States, 116 U.S. 616 6 Sup. Ct. 524, 29 L Ed. 746. In this case it was decied that a compulsory production of a man's private papers is held to be the equivalent of a search and seizure thereof within the meaning of the Constitution. We find that the same opinion had been reached in England years before in the case of Entich v. Carrington and three other King's Messengers, reported in 19 Howell's State Trials, 1029. In this case Lord Camden made the following remarks while summarizing the question of reasonable and unreasonable searches and seizures: "The great end for which man entered into society was to secure their property. That right is

is preserved sacred in all instances where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law are various. Distresses, executions, forfeitures, taxes, etc. are all of this description, wherein every man by common consent gives up that right for the sake of justice and the general good."

Should any doubt ever have been entertained as to whether or not a corporation is entitled to the protection of the Fourth Amendment against unreasonable search and seizure, such doubt was entirely removed by what was said in the case of Hale v. Henkel 201 U.S. 43, 26, Sup. Ct. 370, 50 L Ed. 652. "Although for the reasons above stated men are of the opinion that an officer of a corporation which is charged with a violation of a statute of the state of its creation or of an act of Congress passed in the exercise of its constitutional powers cannot refuse to produce books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the Fourth Amendment, against unreasonable searches and seizures."

The supreme court of Alabama was of the opinion that the books, documents, etc. demanded from the corporation were not immune from search and seizure. The court further stated that the Boyd Case has not only never been departed

from but has been frequently cited with approval as to what was said upon the Fourth and Fifth Amendments to the federal Constitution, as was pointed out by the majority opinion of the court in Ex parte Rhodes, 202 Alabama, 68, 79 South 462, I A L R. 568.

The court was of the opinion that section 138 of the Revenue Act of 1919 did not grant to the tax commission authority to demand of the taxpayer a production of his papers, books , and documents, at anytime and without regard to any pending matter of controversy as this would be a violation of not only the Fourth Amendment to the federal Constitution but also of section 5 of the Alabama constitution as an unreasonable invasion of the privacy of the citizens.

The final question then to be settled was whether or not a pending cause or controversy was shown. The court was of the opinion that as the commission had set aside the assessment of the property as fixed by the board of taxpayers of Jefferson County, and as the information sought was needful for the purpose of revaluation of this property by the state tax commission, that, therefore, a pending cause was shown.

The supreme court, therefore, reversed the judgment of the circuit court sustaining the demurrer to the petition.

"The opinion of the court was that the state through the adequate authorization of its state tax officers or its commission may compel all taxpayers, whether individuals associations of individuals, or corporations to make such full disclosures of particular or property possessions and business conduct as will enable the taxing authority to ascertain taxable values, to effect uniformity of assessment and to impose the burden of taxation with justice and equality between those of the same class, cannot be a matter of doubt against the lawfully authorized effectuation of the public purposes, so essential to the existence of the government as well as justice to the taxpayers of like class there can be no right of individual privacy, secrecy, or immunity. These public purposes must of course be reasonable not unreasonable. "

COLORADO.

Powers of the Tax Commission. The Colorado tax commission has the powers of supervision of local tax officials, assessment of public service corporations, and reassessment.[1] The power of equalization is vested in a state board of equalization which owes its existence to a provision of the state constitution.

1. Lutz., op. cit., pp. 597 ff.

The legislature has transferred all of the former powers of the state board of equalization except the power of equalization to the state tax commission, and even the power of equalization has been transferred in considerable part to the tax commission. The commission has been given authority to determine the true value of the property in the state and to certify its findings to the state board of equalization. The state board of equalization is required by law to use the findings of the state tax commission as the basis for making the state equalization. As a rule the state board has made practically no change in the recommendations of the commission.

Extent of the Tax Commission's Power of Reassessment. The commission has the power to order reassessments upon its own motion of all or any of the property in a tax district. It also has the power to order a reassessment of all or any class of property in the district reassessed. The state board of equalization has the power, of course, if it sees fit, to alter the reassessment made by the tax commission. The commission has apparently extensive powers of reassessment, but as a matter of fact these powers are more apparent than real. A reassessment, if made at all, must be made between September 7, the date on which the assessors returns are legally due, and October 1, the last day on which the commission may order changes in the assessment. It is physically impossible

to carry out a reassessment in this short period of time and the result has been that the tax commission has not as yet ordered a single reassessment.

People v. Pitcher. The constitutionality of the tax commission in Colorado was upheld in the case of People v. Pitcher when the court said that the fact that the assessor is an officer created by the constitution does not preclude the legislature from providing that his work may be corrected, supplemented, or reviewed, and providing a plan therefor.[1]

Missouri.

Powers of the Tax Commission. The Missouri tax commission has the following powers: [2] supervision of local tax officials; the power to assess corporations, and the power of reassessment. The power of equalization is vested in the state board of equalization which owes its existence to a provision of the state constitution.[3] Reassessments made by the state tax commission must be passed upon by the state board of equalization before they become final.

1. 138 P. 509, 50 Colorado 313.
2. General Revenue Laws of the State of Missouri, 1919, Article IV., pp. 45 ff.
3. Ibid, Article V, pp. 50 ff.

Extent of the Tax Commission's Power of Reassessment.

The reassessment clause of the Missouri tax laws is as follows:[1] The tax commission shall have power "to raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or personal property of any individual, co-partnership, company, association or corporation: Provided, that before any such assessment is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held, shall be given to such individual, co-partnership, company, association or corporation as provided in section 12848."

The above clause gives the Missouri tax commission power to initiate reassessments on its own motion. But its power of reassessment is restricted in a number of ways: first, it is restricted to the reassessment of individual properties; and second, the state board of equalization has power to pass upon the reassessment after it is made and determine whether or not it shall stand.[2] Reassessment in order to be effective should give the tax commission power to order reassessments on its own motion not only for individual properties but for whole tax districts.

1. General Revenue Laws of the State of Missouri, 1919, Section 12847.
2. Ibid, Section 12848.

INDIANA.

Extent of the Tax Commission's Power of Reassessment.

The power of the Indiana tax commission to correct inequalities in taxation is limited. [1] It has the power of equalization and may raise or lower the total county valuation but this does not help matters for the individual taxpayer. The Indiana tax commission does not have power to initiate reassessments on its own motion, but can order reassessments only upon complaints made to it by dissatisfied taxpayers, assessors, or members of local boards of review. Its power of reassessment is limited to the individual properties complained of. It does not have power to conduct reassessments of whole districts which has brought such satisfactory results in Wisconsin, Michigan, and Minnesota.

Board of Commissioners of Johnson Co. v. Johnson. In the case of the Board of Commissioners of Johnson Co. v. Johnson the court decided that a decision of the tax commission is not necessarily final.[2] The court said that where the question is simply one of valuation the decision of the tax commission is and ought to be final, in the absence of fraud; but where the question concerns the taxable character of a piece of property the decision of the tax commission is not final. In other words the tax

1. Lutz, op. cit., pp. 151 ff.

2. 89 N.E. 590, 173 Indiana 76.

commission has the right to make the final assessment, for purposes of taxation, upon property which is assessable in character; but it does not have the right to assess, for purposes of taxation, property that is by law not assessable; and the commission is not competent to interpret the tax laws, that being a function of the courts.

OHIO.

Extent of the Tax Commission's Power of Reassessment.

The Ohio tax commission has power to order a reassessment upon its own motion of either all or any class of property, in any district or subdivision thereof, when in its opinion such property has not been assessed in compliance with law.[1] There is one serious limitation, however, to the commission's power of reassessment; and that is that the reassessment is carried out not by the commission itself but by the county auditor. The county auditor of Ohio in addition to his duties as auditor also acts as the county assessor.[2] The county auditor has been given by statute authority to conduct reassessments as

1. General Code of Ohio, 1921, Sec. 5624-4, Art. 79.
2. Ibid., Sec. 5548.

follows: "When a reassessment is ordered in any district or subdivision thereof, the county auditor of such county shall proceed to make such reassessment in the manner provided for by law for making original assessments. Provided, however, that if the tax commission so orders, the county auditor shall, in the case of personal property, make such reassessment by revising and correcting the statements and returns on file in his office without taking new statements or returns from the persons required by law to list or return personal property for taxation.[1]

KENTUCKY.

Extent of the Tax Commission's Power of Reassessments.

The Kentucky tax commission has power to order a reassessment on its own motion of all or any of the taxable property in any county provided the county board of supervisors fails or neglects to carry out the orders of the tax commission.[2] The county board of supervisors has the power to increase or decrease the list of any assessor whenever there is clear evidence that the valuation made by such assessor is not a fair cash value.[3] In other words the county board of supervisors has the power to alter the valuation made by any assessor when in its

1. General Code of Ohio, 1921, Sec. 5624-5.
2. Kentucky Statutes, 1922, Art. 4128a 3.
3. Ibid, Art. 4120.

opinion the valuation has not been made in accordance with the fair cash value principle, and the tax commission has power to alter the equalized valuation as made by the county board of supervisors when in the opinion of the commission this equalized valuation has not been made according to law.

ILLINOIS.

Extent of the Tax Commissions' Power of Reassessment.

The state tax commission of Illinois was created in the year 1919.[1] It has power to order reassessments on its own motion.[2] These reassessments, however, must be general and not individual; that is, they must be of whole assessment districts or whole counties and not of individual pieces of property. The reassessment maybe of a single piece of property or of all of the taxable property in the district or county reassessed. The distinguishing feature about the Illinois reassessment law is that a reassessment is conducted by the local tax officials, the same officials that make the original assessment.

1. Illinois Tax Commission, Report, 1921. p. 321.

2. Ibid., p. 325.

SOUTH DAKOTA.

Extent of the Tax Commission's Power of Reassessment.

The South Dakota tax commission has power to order a reassessment of all or any class of property in any assessment district when in its opinion the original assessment has not been made in accordance with law.[1] The commission's power of reassessment is not as great as it might at first appear since the reassessment is carried out not by the commission or its agents but by the local assessor. It is unreasonable to suppose that a local assessor who had made a statement under oath that the original assessment was correct would make a reassessment which differed substantially from the original assessment.

SOUTH CAROLINA AND MAINE.

Extent of the Tax Commissions' Power of Reassessment.

The South Carolina tax commission has power to order reassessments, upon complaint or upon its own motion, of property in any district.[2] Maine has a state board of assessors which has all of the powers of a tax commission. It has the power to make reassessments.[3]

1. South Dakota Revised Code, 1919, Art. 6587-15.
2. Lutz, op. cit. , p. 585.
3. New York Tax Commission, Report, 1919, p. 96.

CHAPTER III.
CRITICAL ESTIMATE

I. Local Assessor Defective.

The general property tax is defective both theoretically and functionally; Theoretically the general property tax is based upon the assumption that ability to pay taxes depends upon amount of property. This assumption is obviously unsound. Functionally the general property tax has five defects which prevent assessors from assessing property uniformly;namely, lack of uniformity or inequality of assessments, lack of universality or failure to reach personal property, incentive to dishonesty, regressivity, and double taxation. If assessors would assess all property according to its actual cash value or according to some other legal standard, all of the functional defects of the general property tax would be removed. Therefore, one might, upon first thought, reach the conclusion that the local assessor is responsible for all five of the functional defects of the general property tax. But upon second thought one sees the error of such a conclusion. If a local assessor does not assess real property according to its actual vaue, or according to some other established legal standard, the defect is undoubtedly

the defect of the local assessor. But if a local assessor does not assess personal property, which is concealed from him and of which he has and can obtain no knowledge, according to an established legal standard, the defect is undoubtedly not the defect of the local assessor. It is the opinion of tax authorities, however, that local assessors are in a large part responsible for the lack of uniformity in assessments.[1] Reassessment was developed primarily as a device for coercing local assessors into assessing property more nearly in accordance with established legal standards.

II. Reassessment Improves Original Assessment.

The power of reassessment is desirable chiefly in that it makes original assessments more efficient. A reassessment in itself is not desirable, as it means double assessment and therefore double expense. Tax commissions have as a general rule made reassessments only as a last resort after all other attempts at equalization had failed.

1. Michigan Tax Commission, Report, 1921-1922, pp. 48-55.
See also Wisconsin Tax Commission, Report, 1918, pp. 14-20.

The power of reassessment is desirable because of the fact that the assessor, fearing a reassessment, has been induced to assess property more nearly according to the standards set by law. What is really desired is not effective reassessment but efficient original assessment. Efficient original assessment is impossible with inefficient local assessors. Efficient local assessors are impossible under our present local assessor systems. The tax reform most needed at the present time is some change in the status of the local assessor. A number of reforms have been proposed. It seems well to discuss them briefly.

III. County Assessor System v. Township Assessor System.

County System Should Supplant Township System. Opinion seems to be unanimous among tax authorities that the township and city assessor system should be abolished and the county system substituted for it.[1] There are in the United States at the present time 28 states that have county system of assessors. Tax commissions in states which have the township and city assessor systems are recommending the adoption of the county system.

1. Michigan Tax Commission, Report, 1922, pp. 48 ff. See also Wisconsin Tax Commission, Report, 1918 pp. 14 ff. And Lutz, "The State Tax Commission and the Property Tax," Annals of the American Academy of Political and Social Sciences, XCV, 276-283.

Township System Inferior: Reasons. There are at least four good reasons why the township and city assessor system is inferior to the county assessor system: first, township and city assessors hold their positions, as a rule, for only a few weeks or months during the year, for this reason they cannot become as expert in matters of assessment as county assessors who are employed for the whole year or for the larger part of the year; second, township and city assessors receive much smaller salaries than county assessors, for this reason they are likely to be men of less ability; third, because there are so many more township and city assessors than county assessors the problem of supervision becomes much more difficult under the township and city assessor system than under the county assessor system; fourth, no two local assessors assess property exactly alike, for this reason assessments are more uniform under the county system where the assessment of property is all under the direction of one man than under the township and city assessor system where each assessor assesses property independently. Moreover there is much less need for making reassessments under the county assessor system than under the township and city assessor system because assessments are more uniform under the former than under the latter.

IV. Proposed Reforms.

Plan One. All of the proposed changes in the status of the local assessor make the county the taxing unit. There are four principal plans of reform.[1] Plan one puts the appointment of assessors in the hands of the tax commission. The assessors are selected from the civil service list and serve for an indefinite term; that is, they may be removed at any time for cause by the tax commission. The tax commission has power to say in what county each assessor shall serve and power to change an assessor from one county to another. The assessors have power, under certain restrictions to appoint assistants from the civil service list to help in making reassessments.

This plan makes taxation practically uniform and does away in large part with the unnecessary expense of making reassessments. It makes taxation practically uniform because only those assessors who are able to assess property in substantial compliance with law will be kept in office. It does away in large part with the unnecessary expense of making reassessments because when property is assessed in substantial compliance with the law there is little need for making reassessments.

1. Michigan Tax Commission, Report, 1921 and 1922, pp. 51-53; and Wisconsin Tax Commission, Report, 1918, pp. 18, 19.

There are two obstacles, however, that prevent its adoption: first, constitutional objections; and second, local prejudices. Some state constitution say that local officials must be elected by the electors of the local unit. This prohibits the appointment of assessors by tax commissions. Although there has been a drift in the United States toward centralization of administrative authority , there is still a strong natural tendency toward local autonomy and consequently a prejudice toward further centralizing tendencies. So strong is this prejudice in the United States that when Ohio in 1913 passed a law which placed the appointment of local assessors in the hands of the tax commission, the law remained in effect only until the meeting of the next legislature.

Plan Two. The second plan is exactly like the first except that the assessor must be a resident of the county if there is any qualified person in the county who will accept the position. If there is no one in the county eligible and willing to accept the position, the tax commission has power to select an assessor from outside the county. This plan while it could not be adopted in all states because of constitutional reasons would probably be less objectionable than the first plan because of the provision for the appointment of local men as assessors. Resident local assessors would no doubt have a greater ten-

dency to undervalue property than would non-resident local assessors. The tax commission's power of removal would, however, undoubtedly overcome this tendency in large part, and there would be little more need for making reassessments in case of resident than in case of non-resident assessors.

Plan Three. A third plan provides for the appointment of local assessor by the board of county commissioners. The commissioners having power to appoint only persons who have passed a satisfactory civil service examination. This plan would probably be less objectionable to the local unit than either of the first two plans because it places the appointment of local assessors in the hands of local officials; but it would also be less desirable to the tax commission since it deprives it of the right of appointing assessors. Assessments would no doubt be less uniform under plan three than under either plan one or plan two since the tax commission would have less control over the assessors, and there would, therefore, be a greater need for making reassessments.

Plan Four. A fourth plan provides for the election of assessors by the local electors for a term of four years, under the restriction that only persons who have passed a satisfactory civil service examination are eligible to election. This plan has an advantage over the first

plan in that it would be neither unconstitutional nor contrary to the home rule principle. Like plan three, however, it would not be as desirable to the tax commission as either plan one or plan two as it does not give that body the power of appointment. Since this plan does not give the tax commission the power of appointment, there would be, as in plan three, considerable need for making reassessments.

V. Effect of Reassessment upon Assessed Valuations.

No strictly accurate conclusion can be drawn concerning the effect of the power of reassessment upon assessed valuations without complete data from all of the states concerned. Data are not available from all states, but what are available all seem to show that the power of reassessment has done a great deal to induce local assessors to assess property more nearly according to the standards set by law.

Michigan. Investigation by the tax commission has shown that prior to the year 1911, the year that the tax commission was given power to initiate reassessments on its own motion, the average assessed valuation of general property for the different counties of the state ranged from 40% to 80% of its actual cash value.[1] The total assessed valuation of all of the counties of the state for

1. Michigan Tax Commission, Cash Value Assessments, p.7.

the year 1919 was over 90% of the true cash value of the state.[1] Between the years 1911 and 1914 the average ratio of assessed valuation to true valuation for the whole state increased from 76.6% to 86.9% , while the standard deviation decreased from 6.25% to 3.25%. This shows that after the introduction of effective reassessment, property was not only assessed at more nearly its actual cash value but also was assessed more uniformly.

Wisconsin. In the year 1911, the year after reassessment became effective in Wisconsin, property was assessed on the average at less than 65% of its true value, while specific descriptions of property were assessed all the way from 10% to 200% of their true value. In the year 1917 property was assessed on the average at 85.14% of its value and flagrant inequalities in valuation had been largely removed.[2]

West Virginia. In the year 1920, the year before the reassessment act was passed, property was assessed on the average in the different counties of West Virginia all the way from 23% to 87% of its actual value.[3] In the

1. Michigan Tax Commission, Report, 1919 and 1920, p. 20.
2. Wisconsin Tax Commission, Report, 1921-1922, Introductory Chapter, pp. 9,14.
3. West Virginia Tax Commission, Report, 1918, pp. 16,21.

year 1922, after reassessment had been in effect for two years, there had been an average increase in valuation for the different counties of the state of approximately 30%. Boone County in the year 1921 shows an increase in valuation over the previous year of 61%, and Cabell County in the year 1922 shows an increase of 70% over the valuation for the year 1921. The power of reassessment in West Virginia has not only increased the ratio of assessed valuation to actual valuation but has also made taxation more uniform.

New York. In the year 1915 the New York tax commission began a campaign to secure assessment of property at actual cash value. The New York tax commission has the power of reassessment, but it is so restricted by law that it is valueless. In the actual value campaign, therefore, the commission did not make use of the power of reassessment. The results of the campaign were as follows: Between the years 1915 and 1919 the average ratio of assessed valuation to true valuation decreased from 74.35% to 69.1%, while the standard deviation increased from 9.6% to 14.05%. This shows that the campaign resulted not in an increase but in an actual decrease in the ratio of assessed valuation to true valuation, and also that assessments became less uniform than they were before

Conclusion. As was shown above, effective reassessment in Michigan, Wisconsin, and West Virginia has not only been followed by an increase in the ratio of assessed valuation to true valuation but also by an increased uniformity of assessments. These facts lead one to conclude that the increased uniformity of assessments are the result of the effective reassessment. The fact, also, that the New York tax commission was unsuccessful in increasing assessed valuations under an ineffective system of reassessment adds additional evidence to the above conclusion.

VI. Uniformity of Assessments.

The general property tax is theoretically not an equitable tax; therefore, no matter how efficiently it is operated it will not produce equality in taxation. The highest goal toward which it may aim is uniformity of assessments, and any one familiar with the defects that stand in the way of assessing personal property knows that it will never reach this goal. The power of reassessment is not desirable because it increases assessments but because it makes taxation more uniform. Some one has said that the goal toward which the tax commission should work is cash value assessments. This is true for two reasons: first, because cash value assessments insure uniform assessments; and second, because cash value is the most convenient standard upon which assessments may be based.

VII. Time Limit to Reassessments.

Discretion of Tax Commission. Most states have established no definite period during which reassessments may be made. Legislatures have generally left this matter to the discretion of the tax commission. In the cases of Knaus v. Rollof,[1] Blair v. Erickson[2], and Town of South Range v. Tax Commission,[3] the supreme court of Wisconsin has upheld the state tax commission in making somewhat delayed reassessments. (See Wisconsin Chap. II.). In these cases the court said that since there is no legal limitation upon the time that a tax commission can order a reassessment, it was evidently the intention of the legislature to leave this matter to the discretion of the tax commission. The court said further that it would not interfere with any of the acts of the state tax commission unless they became so unreasonable and arbitrary as to indicate a total lack of judgment or discretion. Which was equivalent to saying that the court considered itself the final authority on matters of a judicial nature, but that it would not interfere with the tax commission in its right to make reassessments so long as it acted within reason.

1. 190 N.W. 463.
2. 171 Wisconsin 205.
3. 168 Wisconsin 253.

Established by Statute. A number of states have established time limits during which reassessments must be made, if made at all. In Colorado a reassessment must be begun and completed between September 7 and October 1.[1] In New York reassessment proceedings must be commenced by the tax commission within 30 days after the completion of the original assessment.[2] The laws of Minnesota give the county auditor power to reassess omitted property for a period of five years. Whether or not all states will finally limit the time during which reassessments can be made, one can only prophecy. It is obvious, however, that a reassessment does an injustice to a new property holder in case property changes hands between an original assessment and a reassessment. The longer the time between the original assessment and the reassessment, the greater is the amount of property that changes hands, and the greater is the injustice caused by the reassessment. If the time between the original assessment and the reassessment be sufficiently great, the disadvantages resulting from the reassessment will outweigh the advantages.

1. Lutz, op. cit., p. 604.
2. Tax Laws of New York, Section 173-a.

VIII. Constitutionality of Acts Creating Tax Commissions.

Established by Test Cases. Originally there was much discussion concerning the constitutionality of acts creating tax commissions. The constitutionality of these acts have, however, been thoroughly established in a number of test cases: for example, Alabama - State Tax Commission v. Bailey and Howard; Colorado - People v. Pitcher; Michigan - Board of State Tax Commissioners v. Board of Assessors of Grand Rapids; Minnesota - State v. Minnesota and Ontario Power Co.; West Virginia - State Tax Commission v. Rocke, County Assessor; Wisconsin - Heeney v. Daniels.

Attacked. The constitutionality of acts creating tax commissions has been attacked on several grounds, the most important of which are: first, that the legislature does not have the right to delegate administrative functions to boards; second, that where constitutions provide for the election of local officers by local electors the appointment of special assessors by a tax commission is unconstitutional; third, that the assessment of property is a judicial function and cannot be vested in an executive office such as that of a state tax commission; and fourth, that the assessment of property by a tax commission permits a person to be deprived of property without due process of law.

Upheld by Courts. Courts have disposed of the contentions that the acts creating tax commissions are unconstitutional as follows: First, Dunnell's Digest paragraph 1600 summarizes a number of cases which establish the right of the legislature to delegate administrative functions to boards. Second, there is no constitutional objection to the appointment of a special assessor, and the legislature has the right to do anything that is not expressly forbidden by the constitution. Moreover the legislature has the right to see that laws are enforced; and when the local assessor fails to comply with the laws, the legislature has the right to provide means for enforcing them. Third, concerning the contention that the assessment of property is a judicial and not a legislative function, the supreme court of West Virginia decided in the case of State Tax Commission v. Rocke, County Assessor that the legislature has not only been given power over taxation by the state constituion but it has as a matter of fact been in the habit of exercising this power. Fourth, concerning the "due process of law" objection, the Supreme Court of the United States has decided that "a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the Fourteenth Amendment to the constitution which declares no state shall

deprive any person of property without due process of law ---- etc."

IX. Tax Commissions May Make Reasonable Demands.

In the case of State Tax Commission v. Tennesse Coal, Iron, and Railway Co., [1] tried before the supreme court of Alabama, the court decided that the tax commission, in order to ascertain taxable values, may make reasonable demands of taxpayers. That is, a tax commission has power to compel a taxpayer to produce books, records, letters, etc. which have a bearing on the taxable value of his property. A tax commission, however, does not have power to make unreasonable demands of taxpayers. That is, a tax commission does not have power to compel a taxpayer to produce books, records, papers, etc. of a private nature. The decision in this case is based upon the customary interpretation that has been given to the "due process of law" provision of the federal constitution. For this reason it seems likely that if similar cases should arise in other states the decisions would be the same as in the case cited above.

1. 89 So. 179.

OUTLINE SHOWING THE NUMEROUS VARIATIONS IN THE MANNER OF MAKING REASSESSMENTS.

1. Under What Conditions Ordered:
    a. Upon complaint of dissatisfied taxpayers or local tax officials: as in Indiana.
    b. Upon the motion of the tax commission or upon complaint: as in Minnesota, Michigan, West Virginia, Kansas, Colorado, Missouri, Ohio, Kentucky, Illinois, and South Carolina.
    c. Upon petition of taxpayers: as in Wisconsin.
    d. Upon court order: as in New York.
2. Time Limit:
    a. At discretion of tax commission: as in Minnesota, Michigan, and Wisconsin.
    b. Limited by statute: as in New York and Colorado.
3. Extent as to Territory:
    a. Individual properties: as in Missouri and Indiana.
    b. Entire taxing districts: as in Illinois.
    c. Either individual properties or entire taxing districts: as in Minnesota, Michigan, West Virginia, Kansas, Colorado, and Kentucky.
4. Extent as to Classes of Property:
    a. All of the property: as in Wisconsin
    b. All of the property or only one or several classes of property: as in Minnesota, Michigan, Colorado, Ohio, Illinois, and South Dakota.

5. By Whom Made:
   a. Special assessors of the tax commission: as in Minnesota, Michigan, Wisconsin, West Virginia, and Kansas.
   b. Local assessors: as in Illinois and South Dakota.
   c. County Auditor: as in Ohio.
   d. County tax commissioners or special agents of the tax commission: as in Alabama.

6. By Whom Reviewed:
   a. Local boards: as in Kansas.
   b. Tax commission: as in Minnesota.

X. Variations in Manner of Making Reassessments.

An examination of the above outline will show that the manner of making reassessments varies greatly in the different states. Just what form of reassessment is the most desirable is a debatable question. Tax commissions no doubt would prefer that form which gives them the maximum amount of control over local assessments. If the most desirable form of reassessment is the one which gives the tax commission the maximum amount of control over local assessments, an examination of the above outline might reveal what this most desirable form of reassessment is.

1. Under What Conditions Ordered. Reassessments may be ordered under the following conditions: first, upon complaint of dissatisfied taxpayers or local tax officials; second, upon the motion of the tax commission, or upon complaint; third, upon petition of taxpayers; and fourth upon court order.

Upon Complaint. Reassessments which can be ordered only upon complaint do not result in a uniform distribution of the tax burden, because such reassessments correct only the inequalities complained of while there are often many other inequalities equally great that are not complained of and hence not corrected.

Upon Motion of Tax Commission or upon Complaint. If it is desirable for a tax commission to have the maximum amount of control over local assessments, it should have power not only to order reassessments upon complaint but also upon its own motion. When a tax commission has power to order a reassessment upon its own motion, it is potentially able to make taxation uniform as it has power to correct all inequalities in assessment whether complained of or not. Also when a tax commission has power to initiate reassessments upon its own motion, assessors are in the main coerced into assessing property in substantial compliance with law and there is little need for actually making reassessments.

Upon Petition. Whether reassessments are ordered upon complaint of dissatisfied taxpayers or upon petition of the owners of a certain percentage of the taxable property in the taxing district, the result is the same in that the power of initiation is taken out of the hands of the tax commission and placed in the hands of taxpayers and local tax officials. In either case the tax commission is reduced to the position of servant with power only to carry out the orders that it receives. Reassessments ordered upon petition have the added disadvantage of discriminating against the small taxpayer who finds it extremely difficult to petition the tax commission, as has been the case in Wisconsin.

Upon Court Order. The laws of New York say that the tax commission has power to order a reassessment upon securing an order from a court to make said reassessment. Experiance has shown, however, that the difficulty of securing such an order is so great as to render the law for all practical purposes null and void. Before securing a court order it is necessary to prove an assessor guilty of willful intent and this has been found very hard to do.

2. Time Limit. No doubt tax commissions would prefer to have no limit to the time during which reassessments may be made as this would give them the maximum degree of control over local assessments. Many states like Minnesota, have placed no time limit on reassessments but have left this matter to the discretion of the tax commission subject only to the limitation that the interest of the public must be promoted by the reassessment. Some states have established time limits during which reassessment must be made. In the case of Colorado this time limit is so brief as to make a reassessment impossible.

3. Extent as to Territory. There exists in the different states considerable difference as to the extent of territory that maybe covered by a reassessment. In the state of Missouri the tax commission has power to reassess only individual properties; that is, it does not have power

to reassess entire taxing districts. Reassessment of individual properties alone will not bring about a uniform distribution of the tax burden, as it results in the singling out and reassessment of certain properties while there are other properties in which the original assessment has been equally erroneous which are not reassessed. When an original assessment has been extremely faulty, the only way to correct the inequalities resulting therefrom is to reassess the entire taxing district. In the state of Illinois the case is exactly the reverse. The tax commission of Illinois does not have power to make individual reassessments, but reassessments must be of entire taxing districts. In cases where a whole taxing district has been assessed correctly with the exception of one or several properties there would be a great waste of time and expense to reassess the entire taxing district, but in the state of Illinois this is the only way that the inequalities in taxation could be removed. Obviously the best plan would be to give the tax commission power to reassess either individual properties or entire taxing districts, as has been done in the case of Minnesota and several other states.

4. Extent as to Classes of Property. In the state of Wisconsin a reassessment must include all of the taxable property in the district reassessed. In case where the reassessment is faulty only in respect to one or a few classes

of property, it is a great waste of time and expense to reassess all of the property in the entire district. For this reason it appears that a tax commission should have power to reassess not only all of the property in the assessment districts but also power to reassess only one or a few classes of property, as is the case in the state of Minnesota.

5. By Whom Made. The most general method and the one that gives the tax commission the maximum amount of control over local assessments is to have reassessments made by special agents appointed by the tax commission. The special agents are responsible to the commission and may be removed whenever they fail to carry out its orders. Some states have given the power to make reassessments to local officials: for example, in South Carolina reassessments are made by the local assessors and in Ohio by the county auditors. Reassessments are necessary because local tax officials fail to make original assessments according to established legal standards. There seems good reason to believe that local officials who have failed to make a correct original assessment might also fail to make a correct reassessment. The state of Alabama has compromised by giving the tax commission power to order reassessments made either by special assessors or by the county tax commissioners.

6. By Whom Reviewed. Reassessments may be reviewed either by local boards as in Kansas or by the tax commission as in Minnesota. Whether or not it is desirable for local boards to review reassessments made by agents of a tax commission, it is difficult to say. One thing, however, is certain and that is that it does not give the tax commission as much control over local assessments as it would if the tax commission had the power to review the reassessments.

Conclusion. Summarizing the above discussion, therefore, the most desirable form of reassessment; that is, the form of reassessment that gives the tax commission the maximum amount of control over local assessments is as follows: The tax commission should have power to order reassessments not only upon complaint of dissatisfied taxpayers, or local tax officials, but also power to initiate reassessments upon its own motion. The commission should be limited as to the time of making reassessments only by the provision that the reassessment should promote the public interest. It should have power to reassess individual properties or entire taxing districts. It should also have power to reassess either all of the property or any class or classes of property in the district reassessed. Reassessments should be made by special assessors appointed by the

tax commission, and the tax commission should have power to review reassessments.

XI. Equalization: When Unnecessary.

If local assessors would assess property according to some standard established by law, preferably the cash value standard, there would be no need for either local or state equalization. Different states have tried for years to make taxation uniform by the process of equalization, but have failed. No equalization, no matter how thoroughly carried out, can thoroughly overcome the ill effects of a poor assessment. What is desired is not efficient equalization but correct original assessment. In the state of West Virginia there is no state equalization, yet during the brief period of two years the tax commission has placed the assessment of property in practically every county of the state upon substantially a cash value basis. Wisconsin has dispensed with the need of state equalization by means of separate state and local assessments, the state assessment being carried out by agents appointed by the tax commission. While this process insures a uniform distribution of the state tax burden throughout the state and does away with the need of state equalization, it has the disadvantage of being double assessment and thus involving double expense.

XII. The Future of Reassessment.

As to the future of the power of reassessment one can only prophecy. It is, however, no panacea which in the end, unaided, will bring about an equitable distribution of the tax burden throughout the United States. There is no doubt but that it has succeeded in making taxation much more equitable in several states; but it would be a great error to say that it is the one, only, and best method to insure equitable taxation. The power of reassessment itself is not an end but a means. It is a coercive force designed to induce local assessors to assess property more nearly according to standards set by law. And the power of reassessment is desirable only in so far as it improves local assessments. Reassessments themselves are not desirable, as reassessment means double assessment and hence double expense. What is desired is not reassessment but correct original assessment. If correct original assessments are best obtained through the coercive influence of the power of reassessment, reassessment will probably become a permanent thing and be adopted by all of the tax commissions of the different states. If there can be some better method devised to improve local assessments, the power of reassessment will probably either be entirely discarded by tax commissions or else relegated to a subordinate position.

XIII. Methods of Improving Local Assessments.

As was said before what is desired is not reassessment but correct original assessment. The more control a tax commission is given over local assessments the more nearly correct will original assessments become, and the less need there will be to conduct reassessments. If a tax commission were given power to appoint and remove all assessors at will, there would be practically no need for reassessments as the tax commission would remove all incompetent assessors as soon as they were found to be incompetent. If assessors were elected or appointed locally and the tax commission was given power to remove these officers at will, there would be little need for reassessments. If local assessors were even required to pass a civil service examination before they could qualify for office, there would undoubtedly be much less need for the power of reassessment than there is at present. The power of reassessment seems to beneeded inversely as the extent to which a tax system is centralized. That is, the more control a tax commission has over local tax officials the less need there is for the power of reassessment. As one cannot tell what the attitude of the different states will be toward tax administration in the future, one can only prophecy the ultimate fate of the power of reassessment. There is good reason to suppose, however, that local assessments no matter how conducted will never be so efficient as to do away entirely with the need of an occassional reassessment.

XIV. Reassessment.

It was stated in Chapter I that the power of reassessment was given to tax commissions in order to help them overcome the defects of the general property tax. In order to determine how successful reassessment has been in accomplishing the purpose for which it was intended, it seems advisable to note its effect upon each of the five so called defects.

Effect upon the Five Defects. The power of reassessment undoubtedly makes taxation more uniform as was seen in the case of Michigan, Wisconsin, and West Virginia. It also makes taxation more universal as it coerces assessors into ferreting out and assessing a considerable portion of personal property more nearly according to standards set by law; and therefore does away in large part with dishonesty on the part of assessors. If property were assessed according to the standards set by law a taxpayer could be honest without doing himself an injustice. For this reason it seems probable that as reassessment increases the ratio of assessed valuation to actual valuation there will be less tendency on the part of taxpayers to dishonesty. Since reassessment increases somewhat the amount of personal property assessed, it probably makes the general property tax slightly less regressive. Double taxation has often

been employed as a sort of necessary evil growing out of the inherent tendency to dishonesty on the part of taxpayers. It is hard to see in what way the power of reassessment could overcome this defect.

XV. Future of the General Property Tax.

The power of reassessment has aided tax commissions materially in bringing about the assessment of real property at practically its cash value. It has, however, not solved the problem of personal property, especially the problem of intangibles. The recent success in Minnesota of the three mill tax on money and credits makes one wonder whether or not the general property tax after all is the most desirable kind of a tax. Perhaps, if the general property tax is not discarded, in the future it will exist in a somewhat modified form.

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